

*United States Court of Appeals
for the Second Circuit*



APPENDIX

76-1490

APPENDIX FOR APPELLANT

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P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 76-1490

UNITED STATES OF AMERICA,

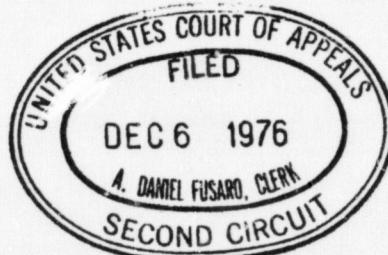
Plaintiff-Appellee,

-against-

MARION E. MEADOWS,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT



WILLIAM S. HERRMANN
Attorney for Defendant-Appellant
16 Oak Street
Stamford, Connecticut 06905
Tel.: (203) 327-9988

PAGINATION AS IN ORIGINAL COPY

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DIST/OFFICE	YR.	NUMBER	MO.	DAY	YEAR	J	N/	R	23	S	OTHER	NUMBER	DEM.	YR.	NUMBER
205-3 N	76-342		10	05	76	1	690	1				0507 RCZ		N	76-342

PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

MARION E. MEADOWS

CAUSE RE: GRAND JURY PROCEEDINGS
 Application for Order to compel
 handwriting samples and Motion to Quash
 Subpoena

Peter C. Dorsey
 Peter A. Clark
 270 Orange Street, P.O. Box 1824
 New Haven, Conn. 06508

ATTORNEYS William S. Herrmann
 16 Oak Street
 Stamford, Conn. 06905

CHECK
HERE
IF CASE WAS
FILED IN
FORMA
PAUPERIS

DATE

10/12/76

FILING FEES PAID

RECEIPT NUMBER

55176 \$5.00 (Appeal)

C.D. NUMBER

STATISTICAL CARDS

CARD

DATE MAILED

JS 5

JS 6

DATE 1976	NR.	PROCEEDINGS
		Oral
10/5		<p>Hearing on/Motion to Quash Subpoena re exemplars. Affidavit of Peter A. Clark, filed. Court overrules objection of witness to the reasonableness and relevancy of the witness's appearance before the Grand Jury. Motion to Quash is denied, on the condition that comparison between the exemplars and the note not be made until further order of this Court. Witness is orally ordered to give exemplars before the Grand Jury. Court stands in recess 3:15 - 4:00 P.M. Hearing re contempt. Application for Order to Compel Handwriting Samples and Major case prints (fingerprints), filed by Government. Affidavit of Peter A. Clark in support thereof, filed. Grand Jury Foreman Mr. Bitgood, sworn and testified. Order filed and entered that witness provide handwriting exemplars to Grand Jury. Judge remains on bench while witness is presented before the Grand Jury. At 4:15 P.M. Government informs the Court that witness has again refused to provide exemplars. Grand Jury foreman returns to stand and testifies further. Court finds witness in contempt and orders he be incarcerated for the life of the Grand Jury (impanelled on 9/27/76) unless he purges himself of the court order. Witness's motion for a stay pending appeal is granted until Oct. 12, 1976 at 10:00 A.M. at which time witness must appear before this court. Court adjourned at 4:30 P.M. Zampano, J. M-10/6/76</p>
10/7		Court Reporter's transcript of proceedings of October 5, 1976, filed. Russell, R.
10/8	"	Court Reporter's Notes of Proceedings of October 5, 1976, filed. Russell, R.
10/12		<p>Notice of Appeal filed by witness. Copies mailed to counsel. Copy mailed to Court of Appeals.</p> <p>Hearing on Motion to Stay. Stay is continued until Nov. 1, 1976, at 12:00 P.M. at which time the defendant shall present himself to the U.S. Marshal for commitment during the life of the Grand Jury unless he purges himself of the contempt order prior thereto. Any further stays must be obtained from the U.S. Court of Appeals. Court reorders witness to appear before Grand Jury to give handwriting exemplars and fingerprints in the manner requested by Grand Jury foreman, for comparison with the withdrawal slip. Court reserves decision on whether the handwriting exemplars and fingerprints can be compared to the note confiscated by F.B.I. Agents. Court adjourned in this matter at 10:47 A.M. Newman, J. M-10/12/76</p>

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:

Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

IN RE: MARION MEADOWS
(Grand Jury Proceedings)

For plaintiff:

Peter C. Dorsey
Peter A. Clark
270 Orange Street
P. O. Box 1824
New Haven, Conn. 06508

For defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISR.
J.S. 5 mailed	Clerk				
J.S. 6 mailed	Marshal				
Basis of Action: Grand Jury Proceedings	Docket fee				
	Witness fees				
Action arose at:	Depositions				

DATE
1976

PROCEEDINGS

Date of
Judgment

10/1

Motion for Capias, filed.

"

Capias issued. Newman, J. Attested copies handed to the

Marshal for service. Copy to U.S. Attorney. M-10/4/76

10/4

Marshal's Return Showing Service, filed - Capias

10/5

Non-surety bond in the sum of \$2,000. filed by witness
Marion Meadows.

10/12

Hearing held on Motion to Stay before Newman, J.
Stay is continued to November 1, 1976 at 12:00 P.M. at which time
the def't shall present himself to the U.S. Marshal for commitment
during the life of the Grand Jury unless he purges himself of
contempt order prior thereto. Any further stays must be obtained from
the U.S. Court of Appeals. Court re orders witness to appear before
Grand Jury to give handwriting exemplars and fingerprints in the manner rea
by G.J. Foreman, for comparison with the withdrawal slip. Court
reserves decision on whether the handwriting exemplars and fingerprints
can be compared to the note confiscated by F.B.I. Agents. Court Adjourned
10:47 A.M. Newman, J. M-10/12/76.

10/8

Notice of Appeal, filed by Witness

SEE CIVIL ACTION NO. N 76-342

2
3 government. The implication of judicial remedies to provide
4 this shield follows naturally from the declaration of the right.
5 And this was in Grand Jury Proceedings.

6 Now, I see no harm in -- Tuesday -- going through
7 this question on the illegality. Because if the search is il-
8 legal and if these documents cannot be used, I intend to move
9 to suppress them. They will have nothing to compare it to at
10 all. Right now the grand jury foreman has nothing anyway, but
11 he'll certainly have nothing and the whole matter will be academic.

12 I think it's unfair at this point to hold this
13 man in contempt and coerce him and twist him and punch him and
14 so on before we've had our full day in court. After we've had
15 our full day in court, that's a different ballgame.

16 THE COURT: The issue at the present time is
17 not whether or not the Court should have signed the order. The
18 order has been signed. The question is has he willfully and
19 knowingly violated the Court's order. It is crystal clear that
20 he has. There is no indication that he did not understand the
21 order, there is no indication that he misinterpreted the order,
22 and there is every indication that he willfully violated the
23 order.

24 Therefore, I find him in contempt. I order him
25 to be confined during the life of this grand jury unless he
purges himself of the contempt order prior thereto.

1 54

2 What is the life of the grand jury?

3 MR. CLAPK: The grand jury first sat, I believe,
4 on September 27th, your Honor. It would be 18 months from that
5 date.

6 THE COURT: That is the Court's order.

7 MR. HERRMANN: May I have an exception in the
8 record to that, your Honor? And I would like to file an appeal
9 on it and request a stay until I file the appeal.

10 THE COURT: Mr. Clark?

11 MR. CLARK: I don't think a stay would be ap-
12 propriate, your Honor.

13 THE COURT: I will order a stay until the wit-
14 ness has an opportunity to present the matter to the Court of
15 Appeals, which, I take it, can be done within the next few days.
16 Certainly, it would seem to me, by Monday.

17 Therefore, I will order a stay of the Court's
18 order until ten o'clock Tuesday of next week, October 12th, at
19 which time the defendant shall present himself in court not only
20 for the hearing which is scheduled, but also to submit himself
21 to the marshals, unless he purges himself or unless the Court
22 of Appeals sets the order of the Court aside.

23 The stay is granted until ten o'clock, Tuesday,
24 October 12th, at which time the defendant shall present himself
25 in this courtroom.

-00000-

2 of cut-out pieces. But, all right, they say it was writing. But
3 in any event, the note has a very, very serious constitutional
4 question involved, concerning the note. Assuming that what they
5 say about the withdrawal slip is true, and going further, without
6 admitting anything, just assuming that they are on solid ground
7 with their withdrawal slip, it has no handwriting on it. Now
8 you're going to order a fellow to give a handwriting for something
9 that has no handwriting on it.

10 THE COURT: They may ask for numbers. I don't
11 know.

12 MR. HERRMANN: Well, then, I should think the
13 order would -- you know, would reflect that, your Honor.

14 THE COURT: I am certain that the Third
15 Circuit did not -- even the Third Circuit did not intend for me
16 to have a plenary, full-blown hearing of the government's
17 evidence. I am satisfied -- and I am not going to change my
18 ruling -- that this affidavit before us, plus the oral statements
19 made by an officer of this court, are sufficient for me to deny
20 the motion to quash, and I so deny it, with the condition that
21 the comparison between the exemplars so ordered and the note not
22 be made until further order of the Court.

23 Now, that is the ruling of the Court. It is
24 done. It is completed. Your objections are noted. I think the
25 record is crystal clear as to the issues and I think it would be

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: JOHN DOE : NO. _____

MOTION FOR CAPIAS

The United States of America moves that a writ of capias issue for one MARION MEADOWS, who was subpoenaed as a witness before the Grand Jury, sitting at New Haven, on September 27, 1976, and failed to obey the said subpoena. In support of this Motion the United States of America represents:

1. Marion Meadows was subpoenaed to appear and did appear before a Grand Jury at Hartford, Connecticut on September 17, 1976, the purpose of said appearance being to obtain fingerprints and handwriting samples from the said Marion Meadows. Mr. Meadows appeared with Attorney William Herrmann of Stamford, Connecticut.

2. Mr. Meadows appeared before said Grand Jury and was ordered to provide fingerprints and handwriting exemplars at which time he refused.

3. Marion Meadows was thereupon taken into open court at which time Chief Judge Clarie signed an order compelling him to provide handwriting samples and fingerprints to the Grand Jury. A copy of this Order is attached hereto as Exhibit 1.

4. Marion Meadows was then returned to the Grand Jury and again directed to provide fingerprints and handwriting samples in response to the Order issued by Judge Clarie. Mr. Meadows again refused to provide said evidence.

5. Since the Grand Jury sitting in Hartford expired as of that day no further action was taken with respect to compelling the production of the evidence requested. Mr. Meadows was, however, served a subpoena on the afternoon of September 17, 1976 in the presence of his attorney, William Herrmann which subpoena called for his attendance before a Grand Jury in New Haven on September 27, 1976.

6. On September 27, 1976 Marion Meadows failed to appear before the Grand Jury in New Haven as directed. On September 28, 1976 the undersigned called William Herrmann, Marion Meadows' attorney, and inquired if Mr. Meadows had any justification or excuse for his failure to appear on the 27th of September. In response to that direct question Mr. Herrmann stated "No comment". "All I can say, is no comment".

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE JOHN DOE : NO.: _____

C A P I A S

THE PRESIDENT OF THE UNITED STATES OF AMERICA
TO: The United States Marshal for the District of Connecticut, or any of
his Deputies, G R E E T I N G S:

It appearing from the Motion of the United States of America that MARION MEADOWS was duly subpoenaed to appear before the Grand Jury at New Haven on September 27, 1976, and that the said MARION MEADOWS has failed to appear as required,

NOW, THEREFORE, YOU ARE COMMANDED to arrest MARION MEADOWS of 51 Bonner Street, Stamford, Connecticut, and bring him forthwith before this Court at New Haven, there to be dealt with according to law.

Dated at New Haven, Connecticut, this _____ day of _____, 1976.

UNITED STATES DISTRICT JUDGE

United States District Court

BEST COPY AVAILABLE

FOR THE

District Of Conn.

UNITED STATES OF AMERICA

In re
Marion MeadowsAPPEARANCE BOND
FOR
MISC. No. N. H. 116

Non-surety I, the undersigned defendant, acknowledge that I and my . . .
 Surety We, the undersigned, jointly and severally acknowledge that we and our . . .

personal representatives, jointly and severally, are bound to pay to the United States of America the sum of \$ 2,000.00, and there has been deposited in the Registry of the Court the sum of \$ _____ in cash ^{or} _____, (describe other security) ^{or} a sum not exceeding 10% of the amount of the bond. ^{or}

The conditions of this bond are that the defendant witness Marion Meadows
 is to appear before _____, United States Magistrate for the
 United States District Court for the District of Conn at
New Haven witness, and at such other places as the defendant may be required to appear, in accordance with any and all orders and directions relating to the defendant's appearance in the above entitled matter as may be given or issued by the magistrate or by the United States District Court for the District of Conn or any other United States District Court witness.

If the defendant appears as ordered and otherwise obeys and performs the foregoing conditions of this bond, then this bond is to be void, but if the defendant fails to obey or perform any of these conditions, payment of the amount of this bond shall be due forthwith. Forfeiture of this bond for any breach of its conditions may be declared by any United States District Court having cognizance of the above entitled matter at the time of such breach and if the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in such United States District Court against each debtor jointly and severally for the amount above stated, together with interest and costs, and execution may be issued and payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States. Witness to appear at New Haven on 10/5/76 at 10 A.M. pursuant to executing subpoena.

It is agreed and understood that this is a continuing bond which shall continue in full force and effect until such time as the undersigned are duly exonerated.

This bond is signed on this 4th day of October 19 76

at New Haven, Conn.

Name of Defendant Marion G. Meadows Address 3168 Main St., Stamford, Ct.

Name of Surety.

Address.

Name of Surety.

Address.

Signed and acknowledged before me this 4th day of October 19 76

Approved:

A. H. T.
U.S. Marshal

Arthur H. Tatman
U. S. Marshal

Where no deposit is required delete the remainder of this paragraph.
 Where no sureties are required, indicate full amount of cash deposited in registry.
 If a form of security other than cash is deposited, describe.
 If the amount ordered to be paid exceeds 10 percent of the bond, _____
 Insert place

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:

MARION MEADOWS

APPLICATION FOR ORDER TO COMPEL HANDWRITING
SAMPLES AND MAJOR CASE PRINTS (FINGERPRINTS)

PETER A. CLARK, Assistant United States Attorney, District of Connecticut, acting for and with the approval of Peter C. Dorsey, United States Attorney for the District of Connecticut, hereby makes application for an order compelling MARION E. MEADOWS to furnish handwriting samples and major case prints (fingerprints) to the Grand Jury sitting at New Haven, in the District of Connecticut, on October 5, 1976. This application is based on the attached Affidavit of Peter A. Clark and any oral or documentary evidence presented at any hearing related hereto:

Respectfully submitted,

PETER C. DORSEY
UNITED STATES ATTORNEY

BY: PETER A. CLARK
ASSISTANT UNITED STATES ATTORNEY

Dated at New Haven, Connecticut
this 8th day of October, 1976.

//

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:

MARION MEADOWS

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER COMPELLING WITNESS
TO PROVIDE HANDWRITING SAMPLES AND MAJOR CASE PRINTS (FINGERPRINTS)

I, PETER A. CLARK, being duly sworn, depose and say:

1. I am an Assistant United States Attorney for the District of Connecticut.
2. I am acting for and with the approval of Peter C. Dorsey, United States Attorney for the District of Connecticut.
3. As part of my official duties, I am conducting proceedings before the Federal Grand Jury sitting at New Haven, Connecticut, which Grand Jury is inquiring into possible violations of Federal criminal statutes, including, but not limited to, Title 18, United States Code, Section 2113 (bank robbery).
4. Marion E. Meadows was subpoenaed to appear and did appear before the Grand Jury on October 5, 1976 at which time he was directed to give and provide handwriting samples and major case prints (fingerprints).
5. Marion E. Meadows acting with advice of counsel refused to give or provide handwriting samples or major case prints to the Grand Jury as directed. His refusal was based on claims under the Fourth and Fifth Amendments of the Constitution of the United States.
6. The handwriting samples and major case prints are essential and necessary to the Grand Jury investigation and are to be used only as a standard of comparison in order to determine whether or not Marion E. Meadows participated in the robbery of the Union Trust Co., High Ridge Branch, 1211 High Ridge Road, in Stamford, Connecticut, on August 3, 1976.

A handwritten note and a handwritten withdrawal slip were used by the individual who robbed the bank. In addition, latent prints of value were developed in the bank during the investigation of the bank robbery.

Peter A. Clark
PETER A. CLARK
ASSISTANT UNITED STATES ATTORNEY

SUBSCRIBED AND SWORN to before me this 5th day of October, 1976.

Helen M. Geier
HELEN GEIER
NOTARY PUBLIC
MY COMMISSION EXPIRES: 3/31/80

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE: :
:

MARION MEADOWS :
:
:

A F F I D A V I T

STATE OF CONNECTICUT:

: ss. New Haven - October 5, 1976

COUNTY OF NEW HAVEN :

PETER A. CLARK, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney for the District of Connecticut and in the performance of my duties I am investigating the robbery of the Union Trust Company, High Ridge Branch, 1211 High Ridge Road, Stamford, Connecticut, on August 3, 1976. Agents of the Federal Bureau of Investigation have advised me that their investigation has determined that said Bank is insured by the Federal Deposit Insurance Corporation and a handwritten note and a handwritten withdrawal slip were used by the lone male individual who robbed said Bank. Agents of the Federal Bureau of Investigation have further advised me that latent prints of value were developed in the Bank during the investigation of said bank robbery.

2. On October 4, 1976, I caused a subpoena to be served upon Marion Meadows to appear before the Grand Jury sitting at New Haven, Connecticut on October 5, 1976. The purpose of said subpoena was to acquire from Mr. Meadows major case fingerprints and handwriting exemplars.

3. These fingerprints and handwriting exemplars are to be used as a standard of comparison against fingerprints developed in the Bank and the handwritten notes used in the robbery which have been re-

covered by the Federal Bureau of Investigation. The exemplars will be used for no other purpose.

4. Bank robbery is a federal offense and within the jurisdiction of a Federal Grand Jury. The Federal Grand Jury now sitting in New Haven, and to which Marion Meadows has been subpoenaed, is conducting an investigation to determine if Marion Meadows was involved with the robbery of the said Bank on the said date.

5. For all of the foregoing reasons I am of the opinion and belief that the information sought from Marion Meadows is relevant to an investigation being conducted by the Grand Jury and relates to a matter that is properly within the jurisdiction of the Federal Grand Jury.

P. A. Clark
PETER A. CLARK

Subscribed and Sworn to before me
this 5th day of October, 1976.

Helen M. Geier
HELEN M. GEIER, NOTARY PUBLIC
(My commission expires 3/31/80)

N 76-342

MICROFILM

OCT 6 1976

NEW HAVEN

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:

MARION E. MEADOWS

ORDER COMPELLING HANDWRITING SAMPLES
AND MAJOR CASE PRINTS (FINGERPRINTS)

United States District Court
District of Connecticut
FILED AT 10 AM OCT 5 1976

Oct. 5 1976
Served by Clerk
By: *P. Clark*
Deputy Clerk
~~Oct 5 1976~~
~~8 AM~~

On application of Peter A. Clark, Assistant United States Attorney,
acting for and with the approval of Peter C. Dorsey, United States Attorney
for the District of Connecticut:

And it appearing to the satisfaction of the Court:

1. Marion E. Meadows was subpoenaed on October 5, 1976, before a duly constituted Grand Jury of the District of Connecticut sitting at New Haven, Connecticut.
2. That the Grand Jury is now investigating possible violations of Federal law, including but not limited to, Title 18, United States Code, Section 2113 (Bank Robbery).
3. That Marion E. Meadows was requested and directed by the Grand Jury to provide handwriting samples and major case prints.
4. That Marion E. Meadows (acting with advice of counsel) has refused to provide handwriting samples or major case prints on the basis of the Fourth and Fifth Amendments to the Constitution of the United States.
5. That in the judgment of the United States Attorney and Peter A. Clark, Assistant United States Attorney, handwriting samples and major case prints are essential and necessary to the Grand Jury investigation.

NOW, THEREFORE, IT IS ORDERED that the said Marion E. Meadows give
and provide handwriting samples as requested by the Grand Jury.

Robert C. Zampar
UNITED STATES DISTRICT JUDGE

Dated: October 5, 1976
4:12 P.M.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

- - - - - :
In the Matter of:

Grand Jury Proceedings

: Misc. NH-116

Re: MARION MEADOWS.

United States Court house
New Haven, Connecticut
October 5th, 1976

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.C.

Appearances:

For the Petitioner:

WILLIAM S. HERRMANN, Esq.
16 Oak Street
Stamford, Connecticut

For the Government:

PETER A. CLARK, A.U.S.D.A.
270 Orange Street
New Haven, Connecticut

1
2
3 MR. CLARK: Good morning, your Honor.

4 THE COURT: Good morning.

5 MR. CLARK: This matter does have a miscellan
6 eous civil number inasmuch as a caias has been issued that would
7 be Miscellaneous New Haven 116.

8 Mr. Marion Meadows is in court this morning
9 appearing pursuant to a subpoena which was issued for him to ap-
10 pear at the grand jury. It is the government's intention to have
11 Mr. Meadows appear before the grand jury and request of him fin-
12 gerprints and handwriting exemplars and to have the grand jury
13 order the production of those items if necessary.

14 Prior to having Mr. Meadows appear before the
15 grand jury his attorney, William Herrmann, who is here in court
16 with advises that he wishes to move to quash the subpoena.

17 THE COURT: May I have a look at the subpoena,
18 please? Very well, what would you like to say, Mr. Herrmann?

19 MR. HERRMANN: Good morning, your Honor.

20 THE COURT: Good morning.

21 MR. HERRMANN: This is not the first time, your
22 honor, that we have been in federal court on this matter. As a
23 matter of fact, I think this is the fourth subpoena. We appeared
24 the first time in August pursuant to a subpoena in this court
25 house and there was no -- nobody here. I appeared with Mr.
Marion, sitting over there. There was nobody here. I had the

1
2 3
3 clerk receipt the subpoena that we appeared. And we were told
4 that we were to come back maybe September 7th or September 8th,
5 but the clerk wasn't sure which day and we'd be notified. We
6 were not notified. September 7th I got a telephone call from a
7 man who identified himself as an FBI agent wanting to know why
8 we weren't here and I told him we had had no notice of it. We
9 were told we were going to be notified. We were never notified
10 of anything.

11 Subsequent thereto another subpoena was issued,
12 served on Mr. Meadows, not for New Haven, but for Hartford -- and
13 we're in Stamford. We went to Hartford. When we got to Hartford
14 Mr. Meadows was called into the grand jury room and he was told --
15 he was asked for handwriting specimens and fingerprints. We
16 then appeared before Judge Clarke, and the grand jury foreman was
17 put on the stand to testify that he asked Mr. Meadows for the
18 material and that Mr. Meadows had refused. I then cross-examined
19 him, and on cross-examination it developed that they had -- the
20 grand jury had no papers to compare this specimen with; that the
21 affidavit was made by the Assistant U. S. Attorney. He doesn't
22 say in his affidavit that he has the papers either, but when the
23 grand jury chairman was put on the stand I examined him, I asked
24 him in substance -- I ordered a transcript of it which I haven't
25 received yet, which I need for a full hearing on this -- I asked
 him, "Do you have anything in your possession, custody or control

1
2 which would appear to be a note such as referred to -- was for a
3 holdup of a bank, anything of that nature?" he said no. I asked
4 him if he ever saw such a writing. He said no. I asked him if
5 he had any fingerprints or photographs or copies of any informa-
6 tion regarding any of this. His answer was no.

7 So it ended up basically that the grand jury
8 didn't even know what was going on. They had nothing to make any
9 comparison with. Nevertheless, Judge Clarie ordered Mr. Meadows
10 to give the handwriting specimen.

11 Now, at that point when he ordered him to give
12 the handwriting specimen, we were told to wait -- Mr. Meadows and
13 I. This was somewhere around two-thirty in the afternoon. We
14 were compelled to wait in the federal court house in Hartford
15 until four-thirty in the afternoon, never called back into the
16 grand jury room, and then at four-thirty we were told to leave.
17 And while we were waiting, another subpoena was served.

18 Now, what I'm driving at is here's a man. He's
19 sitting there waiting to be called back into the grand jury room.
20 They don't call him back in and they serve him with a another
21 subpoena. Now they issue a writ on him. They bring him into
22 the court here yesterday when there was no grand jury here. There
23 was no grand jury here. I don't know what the writ was for yes-
24 terday. And in the motion and in the affidavit for the writ
25 there's a serious error in paragraph 4. It says "Marion Meadows

1 5

2 was returned to the grand jury and directed to provide finger-
3 prints and handwriting samples in response to the order issued by
4 Judge Clarie. Mr. Meadows again refused to provide said evidence."

5 That's not true. He never was called back.
6 They just let us sit there for two hours and then told us to
7 leave. And now yesterday when Mr. Meadows was brought here on a
8 capias, he's in custody, he's here on a capias, which means he's
9 brought here, as I understand it, to try to compel him to testify,
10 and they don't -- but they serve him with another subpoena.

11 Incidentally, the subpoena has no date on it. It doesn't say
12 upon whose application it's issued -- this one yesterday -- it
13 says the subpoena's issued on the application of blank, and down
14 on the bottom the date is blank.

15 Now, my contention is that, first, this is not
16 a legitimate grand jury investigation. This is harassment. It's
17 one thing after another of harassing this fellow. And I have my --
18 my investigation would indicate to me, in addition to my cross-
19 examination of the grand jury foreman in the Hartford federal
20 court -- that they don't have any writing to compare it with.

21 My investigation reveals that the so-called note that was used
22 was made up from pieces cut out of newspapers and magazines,
23 letters that were cut out of newspapers and magazines, that there
24 was no handwritten note, and I'm asking your Honor at this time
25 for a hearing on this matter where I can develop this to show

1
2 6
3 that this is not a legitimate grand jury hearing, this is harass-
4 ment. If anything, is a possible FBI investigation, but that it's
5 not a grand jury hearing, and that there is no note.
6

7 Up to now, the evidence on record -- and I would
8 request that I have time to get that transcript; I ordered it the
9 day I was there, but they haven't given it to me yes -- shows
10 that there isn't any.
11

12 THE COURT: In what respect does your argument
13 this morning differ from the one presented to Judge Clarie, other
14 than the fact that you are claiming harassment? Because he was
15 brought here twice without being called, other than that argument,
16 how does your argument on the law differ from the one that Judge
17 Clarie apparently overruled?
18

19 MR. HERLIHAN: Because at the time I argued
20 before Judge Clarie I didn't have the research done to find this
21 case, which I think is a very important case, and I would like to
22 have an opportunity to put the whole thing into brief form for
23 the Court, but the case is In Re: Grand Jury Proceedings that was
24 argued in the United States Court of Appeals for the Third Cir-
25 cuit and it's reported in 486 Federal 2nd at page 85, and it was
 reported in -- decided September 11th, 1973, which I mention is
 subsequent to the decision of U. S. against Mara which the U. S.
 Attorney's office seems to rely so heavily on, although Mr. Clark
 didn't bring it up today, but I know that's what Mr. Clark relies
 on.

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2 relies so heavily on. And this case goes into this matter quite
3 thoroughly, and they say that the Court is not by any means just
4 a rubber stamp for the prosecutor's office in issuing these sub-
5 poenas. And they tell you that subpoenas are issued pro forma,
6 anybody -- anybody who wants one, practically -- any attorney
7 who wants one, practically can get one from the court and they'll
8 sign it and stamp it and send it out. And that there's no oppor-
9 tunity to oppose this in advance because it just goes out as a
10 matter of ministerial act. And that the Court should look into
11 it and that it's just not cut and dried, as the prosecutor tries
12 to make it appear by U. S. against Mara. And that they must show
13 the reasons for it. And that they analogize it to subpoenas issued
14 by federal administrative agencies. And that there are various
15 defenses which may be presented.

16 THE COURT: I have read In Re: Grand Jury Pro-
17 ceedings that you have called to my attention, a ruling by the
18 Third Circuit.

19 MR. HERRMANN: May I just invite your Honor's
20 attention to a few special points in that opinion?

21 On page 91 in the left-hand column the Court
22 states: "But Gelbhart against the United States --" with the
23 citation "-- makes clear that . Court's determination under the
24 statute of the existence or nonexistence of just cause for re-
25 fusing to obey a subpoena entails the same full judicial consider-

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2 ation as in the administrative subpoena cases. Indeed, Gelbhart
3 holds that because a grand jury witness does not have an oppor-
4 tunity prior to his appearance to file appropriate motions ad-
5 dressed to his subpoena, the statute must be construed as afford-
6 ing him the opportunity of presenting all defenses properly avail-
7 able to him." And then they go into the various defenses which
8 are available. And then in the right-hand column at the top they
9 say, "In the grand jury context," and so on. They go down. But
10 they say that -- going over to the next page, excuse me, the
11 page -- 92 in the right-hand column at the top here, "The admin-
12 istrative subpoena cases give guidance on that problem for courts
13 have recognized that a party seeking to show an abuse of subpoena
14 process can use discovery proceedings to meet this burden."

15 Then they go into the fact that the grand jury
16 proceedings are secret, but that is not -- that doesn't completely
17 dispose of the problem. That in -- in proper cases there will
18 have to be disclosure. There already has been, although I don't
19 have the record of it.

20 THE COURT: What would you like to say, Mr.
21 Clark?

22 MR. CLARK: I would just like to reiterate a
23 brief history of the matter, your Honor.

24 With respect to the first subpoena that was
25 issued, I believe it was for August 29th or a date thereafter

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between the issuance of that subpoena and the date of -- that
it was initially set for, the grand jury was cancelled for some
reason. I don't recall. A letter was sent to the address that
we had for Mr. Meadows -- he says he did not receive it -- and
therefore appeared pursuant to that subpoena, at which time I
believe he spoke to Miss Consiglio.

8 THE COURT: What did the letter say?

9 MR. CLARK: It set the date forward to September
10 7th for the next appearance. As a result, there was not an ap-
11 pearance on the 7th. That was not considered a major problem by
12 us. We simply issued another subpoena for September 17th in
13 Hartford.

14 Mr. Meadows went to Hartford pursuant to that
15 subpoena. He was taken before the grand jury. The grand jury
16 ordered the handwriting. He refused to give it. He was taken
17 before Judge Clarie, who issued the order, and Mr. Meadows was
18 then taken back, and not actually presented to the grand jury,
19 however, he was brought by an Assistant U. S. Attorney to the
20 very door of the grand jury room at which time he and his attorney,
21 as I understand it, indicated an intention not to provide the
22 requested exemplars. At that point Mr. Meadows was handed another
23 subpoena for an appearance on October -- pardon me, September 27th
24 in New Haven, and simply did not appear for that grand jury.

25 The next day we applied for a capias as a re-

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2 sult of that nonappearance. Mr. Meadows was arrested on the
3 strength of the capias and was brought here yesterday, at which
4 time he was again subpoenaed to appear today.

5 It's our intention to ask Mr. Meadows before
6 the grand jury to provide handwriting and fingerprints.

7 The government would rely on United States
8 versus Dionisio and United States versus Mara, which are in
9 410 United States at pages 1 and 19, I believe.

10 THE COURT: Are you familiar with In Re: Grand
11 Jury Proceedings in the Third Circuit which distinguishes those
12 two cases?

13 MR. CLARK: I am not, your Honor. But from the
14 tone of counsel's argument I would assume that it may have something
15 to do with a wiretap claim. I may be wrong.

16 THE COURT: No. It says that the government
17 sought handwriting exemplars, fingerprints and a mug shot from
18 the witness. The Court goes on. "Authority for obtaining them
19 exists, if at all, solely because they are somehow relevant to
20 the grand jury's investigation of an offense falling within its
21 jurisdiction. In view of the fact that the information which
22 would justify obtaining the handwriting exemplars, fingerprints
23 and mug shot is in the government's sole possession, we think it
24 is reasonable that the government be required to make some pre-
25 liminary showing by affidavit that each item is at least relevant

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2 to an investigation being conducted by the grand jury and pro-
3 perly within its jurisdiction and is not sought primarily for
4 another purpose." It is a case that says that -- and more. It
5 goes on to distinguish Dionisio and Mara.

6 I suggest, Mr. Clark, that that case be read
7 by you, because, among other things I mentioned, it also quotes
8 Judge Friendly in a Second Circuit case for support.
9

10 MR. CLARK: If Your Honor please, there was an
11 affidavit submitted to Judge Clarie, at which time the statement
12 was made that the handwriting samples and major case prints are
13 essentially necessary to the grand jury investigation and are
14 to be used only as a standard of comparison in order to determine
15 whether or not Mr. Meadows participated in the robbery of the
16 Union Trust Company in Stamford.
17

THE COURT: Well, counsel has made the argument
that the foreman admitted that the jurors had nothing whatsoever
to compare it to. Now, we are getting into a very difficult area.
This is my first exposure to this type of defense to a subpoena,
and we are faced with, I guess, certain competing and conflicting
principles, one of which is the secrecy of the grand jury pro-
ceedings.
23

On the other hand, I think it is difficult for
you to reply if you have not read this case, and your interpre-
tation could be of assistance to the Court. What is the program
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of the grand jury for the balance of the day? Do they have business to conduct other than with Mr. Meadow? Are they just sitting out there waiting for this ruling from the Court?

MR. CLARK: They do have business to conduct,
your Honor.

THE COURT: Is your presence necessary?

MR. CLARK: Not as far as the other business goes. I can devote my attention to this matter.

THE COURT: Can you?

MR. CLARK: Yes, I dan.

THE COURT: I think you ought to read this case and perhaps see what its history has been since 1973. We will do a little research ourselves.

Have you found any other cases similar to or
the progeny of the case you just cited?

MR. HERRMANN: No. Not as of today, your Honor. But that's -- that was the strongest one.

Incidentally, the Third Circuit is very favorably treated by the United States Supreme Court. This case they cited -- excuse me, I'll just get it out -- which I had invited to the Court's attention, and I will just --

THE COURT: Gelbfert?

MR. HERRMANN: Gelbhart, yes. That was one where there was two appeals to the United States Supreme Court.

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2 one from the Third Circuit and one from the Ninth Circuit in
3 California on almost identical facts, and the United States
4 Supreme Court reversed the Ninth Circuit and affirmed the Third
5 and approved their opinion. And so they do have great persuasive
6 weight with the United States Supreme Court.

7 I would like to, if it please the Court, to
8 make just one statement before you go on, to correct the record,
9 and that is, your Honor, that nobody was ever led, to the door
10 of the grand jury room and nobody indicated anything. We were
11 just treated -- well, I don't want to characterize it, but we
12 were just told to sit and wait. And we waited. And while we
13 were standing in the corridor of the court house in Hartford,
14 outside the court room, the subpoena was served while we were
15 standing there and we were told to still wait. We were served
16 with a subpoena to appear someplace else on another date, but
17 told to wait to appear before the grand jury at the same time.
18 And we stayed there, and we waited, Mr. Meadows and I, 'til
19 four-thirty, until one of the U. S. -- Assistant U. S. Attorneys
20 told us we could leave. At that time I said I would refuse to
21 leave just on his say-so; that I requested that I be excused with
22 the witness by the judge. At which point they took me into
23 Judge Clarie's chambers, and I made sure that we were excused,
24 and Judge Clarie said we were excused, and that was the way it
25 happened. There was nobody that was led to any grand jury room

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2 or anything else.

3 As a matter of fact, for the record, to put
4 this in perspective, I don't think your honor is aware of the
5 reasons that the reasons that the prosecution may have had for
6 this -- for the way they handled the thing at that time. The
7 grand jury expired either that day or the next day, which I had
8 no knowledge of when I went up there, and apparently Judge Clarie
9 had no knowledge of, so then it would appear that the prosecution
10 figured that since the grand jury was expiring the next day,
11 there wasn't much that -- leverage that they had, so they decided
12 instead of calling us back into the grand jury, to serve us with
13 another subpoena.

14 I mean, I'm just -- this is my -- my interpretation.
15 I don't know what they were thinking about. But for the
16 Court's information, the grand jury was expiring that day or the
17 next day, and then they went through all of these various maneuvers at that time.

19 THE COURT: Well, I will have to keep an open
20 mind on the law. Because, as I said, this is my first excursion in-
21 to this area. I think I have to agree with the inference that I
22 should draw from your statement, counsellor; that, certainly, is
23 no way to establish a fact, having an Assistant U. S. Attorney
24 talk to someone in a corridor. If the government is later on
25 going to contend that there was going to be a refusal to obey

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2 Judge Clarie's order, what they should have done was to bring
3 your client before the grand jury and have him refuse to comply
4 with the Court's order.

5 May I ask you this. Did you cite this case to
6 Judge Clarie?

7 MR. HERRMANN: No, your Honor. I didn't have
8 time --

9 THE COURT: All right.

10 MR. HERRMANN: -- to do my reasearch at that
11 time, and I did not.

12 THE COURT: I will tell you what my schedule
13 is, because I must allow Mr. Clark an opportunity to read this
14 case and either meet it or distinguish it or comply with the
15 standards set forth. I can resume with counsel at two-thirty.
16 I have a hearing on a temporary restraining order in my chambers
17 before that, but I can be back here and be ready for counsel at
18 two-thirty. What's your schedule, Mr. Herrmann?

19 MR. HERRMANN: Well, I mean, if the Court so
20 desires, I will be here. I would prefer to have time to put in
21 a written brief.

22 THE COURT: Well, we are going to do some work
23 on it in the meantime, and Mr. Clark will. Apparently this is
24 your source of authority and there is not too much more that can
25 be added to it. Unless there are other cases. We are going to

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2 take a look during the noon hour to see what has followed. Mr.
3 Clark, I am sure, will. As I said, I am sure there is also a
4 Second Circuit case cited.

5 MR. HERRMANN: Judge Friendly's opinion, your
6 Honor?

7 THE COURT: Yes.

8 MR. HERRMANN: That also involves handwriting.

9 THE COURT: I am going to take a look at that.
10 We will recess.

11 MR. HERRMANN: May I just say one thing, your
12 Honor? I think you overlooked one point that I wanted to raise
13 in addition to this case -- was that, as I stated before for the
14 record, my investigation indicates to me that the so-called note
15 was made out of pieces cut out of a newspaper and cut out of
16 magazines and not written at all, and the only way I can show
17 that is with witnesses on the stand.

18 THE COURT: We will take one thing at a time.

19 MR. HERRMANN: O.K.

20 THE COURT: As I say, I don't know what Mr.
21 Clark's reaction is going to be after he reads this case.

22 MR. HERRMANN: I will return at two-thirty,
23 your Honor.

24 THE COURT: We will recess until two-thirty.
25 (Luncheon recess.)

(2:45 p.m.)

THE COURT: In the matter of Marion Meadows,
are the parties ready to proceed?

MR. CLARK: Yes, the government is, your Honor.

THE COURT: Maybe I should hear the government
first.

MR. CLARK: Well, during the recess, your Honor,
I did have opportunity to read the case cited by Mr. Herrmann.
It seems to me that that case was decided essentially on the
supervisory power of the Third Circuit and as such I don't think
it would necessarily be binding on this circuit. I did not find
a Second Circuit case. There may be one. I probably didn't have
the opportunity to come up with one. In the First Circuit I found
U. S. versus Lopreato , 511 Fed. Se 1150. There they declined
to adopt the position taken by the Third Circuit.

THE COURT: Is that in the footnote in that
case?

MR. CLARK: That was a -- the Eighth Circuit,
I think, had the one with the footnote. I think the First Circuit
was in the final paragraph of the decision.

THE COURT: All right.

MR. CLARK: I guess your Honor is familiar
with the Eighth Circuit case, Universal Manufacturing, at 508
Fed. Sec' 684, in which they refused to adopt the Third Circuit

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rule, they just took no position at that point, and that was in a footnote. Later, in the Eighth Circuit, in Palmer v. U. S. at 530 Fed. Sec' 787, they said that there was no need to show reasonableness, apparently they rejected the Third Circuit's procedure, and they based that decision on United States versus Mara.

THE COURT: What was the latter case?

MR. CLARK: United States versus Palmer -- or
Palmer versus United States, rather, 530 Fed. Sec' 787.

THE COURT: What circuit is that?

MR. CLARK: That's the Eighth Circuit. Then there was a follow-up, I guess it's called Scofield Two -- is the common name for it, in the Third Circuit, that's 507 Fed. Sec. 963, and they amplify on their earlier holding in Scofield One. They indicate on page 966 that -- first of all, they say what they did not say earlier, that it did not require showing reasonableness of determination of probable cause. They do say that Scofield One requires a minimum showing by affidavit in every case, that each item sought is relevant to an investigation probably within the grand jury's jurisdiction and not sought primarily for another purpose.

In view of that language I'm prepared to comply with that, and I would like to make clear that I do so only in this case. That my doing so is not intended to furnish precedent

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2 or a concession by our office that this case applies generally.
3 However, in this particular case I have prepared an affidavit in
4 which I state that I am an Assistant U. S. Attorney investigat-
5 ing a certain bank robbery, that there was a handwritten note
6 used in the bank robbery, that we wish to compare the finger-
7 prints and handwriting examples from Mr. Meadows and further cite
8 there was an FDIC insured bank and, therefore, it's a matter
9 within the proper jurisdiction of the federal grand jury, and I
10 will file that affidavit at this time. I have provided a copy to
11 counsel.

12 THE COURT: Do I interpret the government's
13 position as follows: That the Third Circuit authority is the one
14 that the government recognizes; two, that the Second Circuit, at
15 least with the time limitations we have, does not appear to have
16 ruled directly on the question; three, under the exigencies of
17 the present situation, the government will comply, or feels it
18 has complied, with the Third Circuit standards for the purposes
19 of this case; and, four, that its compliance should not be con-
20 strued as precedent in later cases if the government decides to
21 challenge the standards set forth in the Third Circuit; is that
22 about your position?

23 MR. CLARK: I think your Honor accurately re-
24 flects our position, yes, your Honor.

25 THE COURT: Are you privileged to tell me

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2 in the first paragraph of your affidavit what the phrase "hand-
3 written note and handwritten withdrawal slip" connotes?

4
5 MR. CLARK: Yes.

6 THE COURT: Because there has been some indi-
7 cation here that there was no such note in handwritten form.

8 MR. CLARK: I am not aware of the source of Mr.
9 Herrmann's information with respect to that. Our investigation
10 as conducted by the Federal Bureau of Investigation, having in-
11 terviewed the tellers -- the teller that was in fact robbed --
12 the teller that was in fact robbed indicated that a handwritten
13 note was handed to her demanding money and, also, a withdrawal
14 slip that had a certain amount written on it. The withdrawal
15 slip was left at the bank, the handwritten note was subsequently
16 found just outside the home that had been occupied by Mr. Meadows
17 up until a few hours before that time. I have personally seen
18 photographs of the note. It is a handwritten note. I don't
19 know if I can elaborate further on that.

20 THE COURT: Let me ask you another way. Is it
21 a note that was prepared by clipping out printed letters from a
newspaper and then pasted together?

22 MR. CLARK: No, your Honor, it was pen and
23 ink or pencil. It was handwritten, in any event.

24 THE COURT: And the nexus between the note and
25 the defendant, among other things, is that the note was found in

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2 close proximity to a place in which the government contends the
3 witness Meadows had a residence?

4 MR. CLARK: That's correct. I might also note
5 that I do indicate in my affidavit that the purpose of the exemp-
6 tions is to be used for a comparison between those documents men-
7 tioned and Mr. Meadows, not to be used for some other purpose.
8 This relates specifically and directly to the investigation in
9 the identification of Mr. Meadows.

10 THE COURT: Very well. Mr. Herrmann?

11 MR. HERRMANN: If it please the Court, the af-
12 fidavit, again, of course, is by an Assistant U. S. Attorney and
13 by -- on information and belief received from an FBI agent and
14 so on, not by the grand jury or grand jury foreman, which I
15 would like to put aside for a moment because Mr. Clark just
16 brought up an issue of the purported note. That this purported
17 note was found at the home or residence of Mr. Meadows.

18 THE COURT: I don't think he quite said that,
19 but go ahead.

20 MR. HERRMANN: Well, something -- he brought --
21 he said -- and I think that raises a very distinct question -- or
22 could raise a very distinct question of the propriety of the
23 seizure which should be gone into. Because if this note -- so-
24 called note -- was illegally taken, then it cannot be used.

25 THE COURT: I don't think Mr. Clark said that

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2 it was seized at the home of the witness.
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4 MR. HERRMANN: He was sort of vague on that.
5 But I think that we're entitled to go into that. And the Supreme
6 Court of the United States is very clear on that one. That if
7 that is so -- I mean, if that is so, I can't -- I don't know.
8 I just heard him say that.

9 THE COURT: Well, why don't we ask Mr. Clark
10 to recollect what he said. I could also check with the court
11 reporter. I did not get the impression that it was seized from
12 Mr. Meadows' residence.

13 MR. CLARK: It was on -- I don't recall specif-
14 ically how I did phrase it, your honor, however, it was seized
15 either in or upon a small outdoor stove or fireplace-type of
16 thing outside of the residence and probably on the property that
17 was occupied by Mr. Meadows. This was rented or leased property.
18 We can concede for the mome t that he would have standing at some
19 point to object, however, in United States versus Calandra, in
20 414 U. S. -- does, as Mr. Herrmann suggests, speaks clearly on
21 the issue and it suggests that grand jury investigations are not
22 to be interrupted by questions as to the legality of evidence
23 presented to them.

24 THE COURT: Aside from that issue, Mr. Herrmann,
25 what else do you have to say?

MR. HERRMANN: I have cases to the contrary,

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2 if I could search my records, but -- then, I would like to put
3 on the record, your Honor, that, you know, if this is so, and if
4 they concede that Mr. Meadows would have standing, that it would
5 now be incumbent to hold a hearing on that before going further.
6 Because the United States Supreme Court has specifically said when
7 you can't use illegal evidence, that means you can't use it. It
8 means period you can't use it. That's an old, old case used by
9 Justice Holmes, and I would like a hearing on -- specific -- es-
10 pecially on that point.

11 THE COURT: That's another issue. How about
12 the issue that I am faced with today? Let's put this in --

13 MR. HERRMANN: I don't think his affidavit is
14 sufficient, your Honor.

15 THE COURT: That's something different. Now,
16 let's put this in perspective, because I am in the middle of an
17 injunction hearing in another case. The first question that came
18 before me in this case concerns the motion to quash the subpoena,
19 and the claim is made that under the controlling authority of the
20 Third Circuit the government has made no showing whatever of the
21 reasonableness of the request for exemplars and fingerprints before
22 the grand jury. The government has said, "O.K. We'll try to
23 conform to the standards set by the Third Circuit -- without
24 establishing precedent in this circuit."

25 Now, let's stay on that point, because this

2 other point may need additional research on my part. But, you
3 are saying the affidavit is not sufficient?

4
5 MR. HERRMANN: It doesn't set forth what Mr.
6 Clark now told the Court. What he tells the Court is different
7 from the affidavit. Now, what is the Court going to rely upon?

8 THE COURT: What's different?

9
10 MR. HERRMANN: He talks in here about he's an
11 Assistant U. S. Attorney and he's investigating and so on and so
12 forth, and he says agents of the Federal Bureau of Investigation
13 have advised him, which, of course, is, you know, hearsay on
14 hearsay; that latent prints of value were developed -- would
15 develop, and then, when he talks about this so-called note, hand-
written notes, he doesn't go into at all how they got it, where
they got it or who even has it.

16
17 The last time I questioned the grand jury fore-
man he didn't have it and he still may not have it.

18
19 THE COURT: Well, first of all, I am not sure
20 the government has to go that far, even in the light of the Third
21 Circuit rule, in the face of lack of proffer of evidence to the
22 contrary. But secondly, and most importantly, Mr. Clark said he
23 himself has seen a photostat.

24
25 MR. HERMANN: Did you say that?

THE COURT: Of the note.

MR. CLARK: I have seen a photograph of the note.

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2 And it's at the FBI laboratory.

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4 THE COURT: Yes. He said he personally observed
5 the note that's in question, the note to which the government wants
6 a comparison. Now, he is an officer of the court. He has sub-
7 mitted an affidavit under oath. I am not sure, at least prima
facie, the government has not complied.

8
9 MR. HERRMANN: Your honor, I'd have a question --
10 I don't have a question -- his word as an officer of the court.
11 Mr. Clark issued an affidavit on the rapias that was incorrect.
12 I dont' think he did it intentionally, but it was incorrect -- in
13 a very major particular. I mean, I wouldn't for a moment question
14 his word, I wouldn't question his word, but I think this new thing
15 that's come up now about the note being seized -- and I just have
16 in front of me here, your Honor, for the record, the leading
17 case is Silverthorn Lumber Company against the United States in
18 251 U. S. 385, which is a subpoena duces tecum case, and it was
19 before the grand jury, and Justice Holmes says you cannot use
20 illegally seized evidence for anything, grand jury or otherwise.

21
22 THE COURT: I also have in the back of my mind
that I read a Supreme Court case on wiretapping --

23
24 MR. HERRMANN: Yes, your Honor.

25
THE COURT: -- where the court said -- and
this is all subject to my taking a one hundred and eighty degree
turnabout when I find out what case I'm referring to myself --

2
3 that the alleged illegality of the wiretap procedure could be
4 called into question before the witness was required to go be-
5 fore the grand jury to give a voice exemplar which would enable
6 the government to compare the voice exemplar with the allegedly
7 illegal wiretap.

8 MR. HERRMANN: There's a case, your Honor --

9 THE COURT: Do you know the case I'm referring
10 to?

11 MR. HERRMANN: It's not exactly a voice exemp-
12 lar, but I think the case that your honor is referring to is in
13 Re: Grand Jury Proceedings, Harrisburg, Pennsylvania, again,
14 U. S. Court of Appeals, Third Circuit, 450 Federal 2nd 199, and
15 that was affirmed by the United States Supreme Court in the --
16 it's 408 U. S. 41. It's the -- what was that that your Honor
17 mentioned before -- the Gelbrand -- it was affirmed.

18 THE COURT: I didn't mention it.

19 MR. HERRMANN: It was affirmed under a dif-
20 ferent name. Previous to the luncheon break, your Honor, we men-
21 tioned that case, because it's in that -- it's referred to in that
22 case.

23 THE COURT: Gelbart?

24 MR. HERRMANN: I think that's it.

25 THE COURT: 408 U. S. 41?

MR. HERRMANN: Yes, your Honor.

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2 Gelbart against United States, 408 --

3 THE COURT: Forty-one.

4 MR. HERRMANN: -- forty one. And that's an
5 illegal search and seizure.

6 THE COURT: Let me get one ruling down first.

7 Based on the record so far and in view of the representations made
8 by the Assistant U.S. Attorney in open court and in the affidavit,
9 I overrule the objection which was directed to the reasonableness
10 and relevancy of the witness' appearance before the grand jury.

11 Now, we come to issue number two. Frankly, I
12 am not completely familiar with the Calandra case, but I also
13 thought it held, Mr. Clark, that the Fourth Amendment objections
14 must await a motion to suppress later on. But that's a dim
15 memory on my part. Mr. Herrmann has mentioned some other
16 cases that I am just not aware of. As I say, reaching into
17 my memory, I remember that wiretap case in which the
18 petitioner claimed that he had a right to challenge the
19 legality of the search and seizure prior to the grand jury
20 being able to -- I thought it was a voice exemplar -- but being
21 able to do something.

22 Now, where do we go with issue number two?

23 MR. HERRMANN: I think that's vital. Because,
24 if it please the Court, what Mr. --

25 THE COURT: But, you see, I was directing the

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2 question to Mr. Clark.

3 MR. HERRMANN: I'm sorry. I'm sorry.

4 THE COURT: I know what your position is.

5 Your position is that we don't do a thing until we resolve that
6 issue.

7 MR. HERRMANN: No, your Honor. What I was
8 going to say -- excuse me. I'm an old law professor, and I was
9 going to lecture. What I was going to say was, about the illegal
10 evidence with a grand jury, the rule -- there's a distinction of
11 the rule, which I was going to set forth, as I understood, it to
12 the Court, with the Court's permission. That's what I was going
13 to say. I wasn't going to argue.

14 THE COURT: Why don't we hear you, then. I'm
15 sorry. Why don't I let you finish.

16 MR. HERRMANN: What I was going to say, your
17 Honor, was, I think what Mr. Clark has in mind was the Blue case,
18 which is -- basically, the idea is that a grand jury can indict
19 a person even though there may be some illegal evidence before it
20 provided that there's also legal evidence. And that's really not
21 the time to test it, before indictment, whether it's based on
22 legal or -- illegal or legal.

23 However, this is a different issue here. This
24 is an issue of calling a person before the grand jury when there
25 is a question in issue of whether the evidence that they have or

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2 the only evidence that they have may be illegally seized. And
3 the distinction is very clearly made in the -- In Re: Grand
4 Jury Proceedings, Harrisburg, Pennsylvania, the one I cited be-
5 fore, in 450 Fed. 2nd at page -- at 199, et seq. And it's also
6 in the landmark case, of Silverthorn Lumber Company against the
7 United States, in 251 U. S. 385. And Mr. Justice Holmes in that
8 case said in the Silverthorn Lumber Company case, said that the
9 essence of a provision forbidding the acquisition of evidence in
10 a certain way is that, not merely evidence so acquired shall not
11 be used before the Court, but it shall not be used by the govern-
12 ment at all.

13 This language would logically appear to mean
14 that the Fourth Amendment prevents the government from using il-
15 legally seized evidence as the basis for questioning aggrieved
16 bodies before a grand jury.

17 "As we understand the holding of Silverthorn
18 it would appear to control the issue raised by Sister Egan." She
19 was the particular one who was subject to illegal wiretaps, a
20 nun. I don't know if you recollect these. These were the cases
21 back in 1970s. Various nuns and priests who were doing the civil
22 rights action.

23 THE COURT: Do we agree that the issue before
24 the Court at the present time is that the petitioner moves to
25 quash the subpoena on the ground that the exemplar sought by the

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2 grand jury may not be obtained because the items which the govern-
3 ment intends to compare the exemplars with were illegally seized

4 MR. HERRMANN: Yes, your Honor.

5 THE COURT: And you have mentioned some cases
6 which you contend --

7 MR. HERRMANN: Substantiate -- I contend, sub-
8 stantiate that.

9 THE COURT: At least that there should be a
10 hearing on the issue prior to --

11 MR. HERRMANN: Well, at least -- I mean I don't
12 think it's been established that they've been illegally seized.
13 I mean, I think we'd have to establish that before the Court
14 first and then get into the law.

15 THE COURT: Now, Mr. Clark. Go ahead.

16 MR. CLARK: With respect to that precise point,
17 where your honor's finding the issue, I think it's important to
18 keep in mind that one of the documents that these exemplars would
19 be compared with was left at the bank. So there's no issue what-
20 soever of search and seizure.

21 Secondly, I think that Mr. Herrmann seems to
22 be glossing over the point that what's really at stake -- is
23 the compelled production of additional evidence. It's not a ques-
24 tion of whether any prior evidence was illegally seized or not.
25 So I think that's another consideration. We're considering

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2 whether this subpoena is to be enforced -- which is requiring him
3 to produce new evidence before the grand jury.

4 Finally, I think that -- I mentioned United
5 States versus Calandra. There are also the wiretap cases in the
6 Second Circuit, such as In Re: Milo, which is in 529 Fed. Sec',
7 In Re: Gruse and Turgeon. And I think that an analysis of those
8 cases and the Calandro case indicates that the grand jury inquiry
9 is not to be interrupted for the purpose of litigating the legal-
10 ity of searches and so forth along the way. That's a determina-
11 tion that's to be made down the road, as to whether this would be
12 admissible at trial, but that the grand jury inquiry should not be
13 interrupted at this point.

14 THE COURT: Of course, you raise a very good
15 point, that one of the documents that will be used for comparison
16 was not seized in any residence or anyplace where standing or
17 objections based on prejudice can be raised, and that is at the
18 bank where the robber left it. I certainly agree with you on that.

19 With respect to the second document, I am not
20 sure, Mr. Clark. I have not read these cases with that in mind.
21 Calandra I read some time ago, and I am not sure I read it with
22 this issue in mind. Some of the other cases, Milo and the others,
23 just do not ring a bell.

24 How can we proceed so as to preserve your wish
25 to go forward in an expeditious manner and yet protect the

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2 petitioner in the event that he has a solid legal objection?

3 Let me ask you this: is the grand jury going
4 to be in session for the next week or two?

5 MR. CLARK: The grand jury will sit tomorrow.
6 We then excuse them subject to call. It would be perhaps three
7 or four weeks before they're in again.

8 This matter has been dragging on somewhat, and
9 that this is, as Mr. Herrmann indicates, a fourth attempt.

10 THE COURT: Let me ask you this -- and if you
11 are not privileged to answer, please, so state -- but let us as-
12 sume he gives his exemplars today, is there an expert who is go-
13 ing to take a look at those exemplars?

14 MR. CLARK: They would be forwarded to the FBI
15 laboratory.

16 THE COURT: All right. Now, what if I ordered
17 the exemplars to be given today -- because you are surely on solid
18 ground with respect to the withdrawal slip -- but that the govern-
19 ment does not forward the handwritten note until I hear further
20 arguments on Mr. Herrmann's objection to the comparison?

21 In other words, is it agreeable, based on my
22 ruling so far, which may be subject to review, but I have already
23 ruled that you have shown reasonable grounds for the exemplars,
24 that you forward the withdrawal slip and the exemplars to your
25 expert? Hold off your handwritten notes until we have this

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2 hearing on the law? In the meantime, I will have an opportunity
3 to review all these cases.

4 MR. CLARK: All right.

5 THE COURT: Now, by that I mean I could hope-
6 fully have a hearing -- and when I say hearing, I mean a chance
7 for everyone to review the law and orally argue to the Court --
8 within a matter of days. In fact, if counsel can get ready, I
9 can hear you on Friday. Today is Tuesday.

10 MR. CLARK: I think I can agree to this, your
11 Honor. First of all, the documents have already been forwarded,
12 but I can easily direct that they not be compared -- or that the
13 handwritten note found at the home not be compared. The finger-
14 prints and the withdrawal slip in the bank I take it would not be
15 covered by that agreement, only the note found at the home.

16 Secondly, and again as with the affidavit, I
17 wish to make it clear that I don't agree to that as a matter of
18 law or precedent but as an accommodation to all the parties. In
19 my estimation, as I read the cases, the rule -- or the law is
20 precisely to avoid hearings to interrupt the grand jury. I think
21 that --

22 THE COURT: But the grand jury is not going to
23 be interrupted.

24 MR. CLARK: Well, in a sense the investigation
25 is interrupted in that the work being performed on behalf of the

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2 grand jury by the FBI lab would be interrupted. But since there's
3 only a few days, I find as a practical matter I have no trouble
4 reaching that accomodation.

5 THE COURT: I could hear you Friday morning.

6 MR. CLARK: Fine.

7 THE COURT: If you can get ready.

8 MR. CLARK: Sure. Yes.

9 THE COURT: How about you, Mr. Herrmann?

10 MR. HERRMANN: I have been here, your honor,
11 two days in a row already. I don't think I could get ready be-
12 fore next week.

13 THE COURT: This is my calendar for next week.

14 MR. HERRMANN: Today is the 5th. I know -- next
15 Thursday I'm in Probate Court in Old Saybrook. Tentatively,
16 Tuesday?

17 THE COURT: How about Tuesday?

18 MR. HERRMANN: Tentatively Tuesday, your Honor?
19 Subject to me checking with my office to make sure.

20 THE COURT: Well --

21 MR. HERRMANN: I know that -- you know, it's an
22 important matter.

23 THE COURT: Tuesday.

24 MR. HERRMANN: Tuesday.

25 THE COURT: At ten.

MR. CLARK: The 12th, your Honor?

MR. HERRMANN: What date is that?

THE COURT: The 12th.

MR. HERRMANN: The 12th?

THE COURT: The 12th at ten o'clock.

Now, I suppose, without knowing what is going to happen, that there is a possibility that exists that Mr. Meadows this afternoon will refuse to comply, and we have to think about a hearing on that basis.

MR. CLARK: I have prepared additional --

THE COURT: Well, I'm anticipating something that hasn't happened yet. Are you privileged to tell me what is going to happen?

MR. HERRMANN: Well, I would just like, before I say that, your Honor, to just -- would respond to your Honor's comment.

THE COURT: Yes. Go ahead.

MR. HERRMANN: That the prosecution is on solid ground with the withdrawal slip. I mean, at this point we really don't know if they're on solid ground. And secondly, we don't know what's on the withdrawal slip. According to my investigation, some of the things I saw, the withdrawal slip had numbers and no writing. The so-called withdrawal slip had numbers and no writing, whereas the note was, according to my investigation, was made

2 of cut-out pieces. But, all right, they say it was writing. But
3 in any event, the note has a very, very serious constitutional
4 question involved, concerning the note. Assuming that what they
5 say about the withdrawal slip is true, and going further, without
6 admitting anything, just assuming that they are on solid ground
7 with their withdrawal slip, it has no handwriting on it. Now
8 you're going to order a fellow to give a handwriting for something
9 that has no handwriting on it.

10 THE COURT: They may ask for numbers. I don't
11 know.

12 MR. HERRMANN: Well, then, I should think the
13 order would -- you know, would reflect that, your Honor.

14 THE COURT: I am certain that the Third
15 Circuit did not -- even the Third Circuit did not intend for me
16 to have a plenary, full-blown hearing of the government's
17 evidence. I am satisfied -- and I am not going to change my
18 ruling -- that this affidavit before us, plus the oral statements
19 made by an officer of this court, are sufficient for me to deny
20 the motion to quash, and I so deny it, with the condition that
21 the comparison between the exemplars so ordered and the note not
22 be made until further order of the Court.

23 Now, that is the ruling of the Court. It is
24 done. It is completed. Your objections are noted. I think the
25 record is crystal clear as to the issues and I think it would be

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4 superfluous if we kept on with this for the balance of the after-
5 noon.
6

7 MR. HERRMANN: Could you just clarify -- excuse
8 me -- to what Tuesday is going to be?
9

10 THE COURT: All right. Tuesday is scheduled
11 for argument on the issue as to whether or not the government can
12 use the exemplars to be compared with the handwritten note found
13 near or in the petitioner's home. But the exemplars shall be
14 given for comparison with whatever else the government may have
15 including the withdrawal slip.
16

17 Now, that is the ruling of the Court.
18

19 MR. HERRMANN: All right. I know --
20

21 THE COURT: My next question is, if we are
22 going to have a hearing here on contempt, I have to schedule
23 that. As you know, I am in the midst of a temporary injunction
24 hearing and I am solidly committed almost every hour of every
25 day, so I would like to plan my course.

26 I have overruled your objections to the request
27 for exemplars. I denied your motion to quash the subpoena with
28 the condition so set forth earlier. Now, where do we go from
29 here?

30 MR. HERRMANN: And I know you don't have to
31 ask for an exception in federal court, it's clear.
32

33 THE COURT: It's clear.
34

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MR. HERRMANN: I would direct -- or -- tell the witness not to give the exemplar at the time, your Honor, respectfully.

THE COURT: Very well. Your next move, Mr. Clark?

MR. CLARK: We would come into court. I have affidavits prepared, an application for an order compelling the handwriting and fingerprints. I have an order drafted for your Honor's signature. I have all the paperwork done. I can take him before the grand jury, he can refuse, he can come back in, and you sign the order, and if he refuses we'll have to have a contempt hearing.

THE COURT: Here is what we will do. You may proceed. I am ordering the petitioner, Marion Meadows, to appear before the grand jury this afternoon and give the exemplars as requested by the government.

I am going to recess now and pick up with my temporary injunction hearing. Let me know if you need me later this afternoon. I will be available.

(Whereupon, a recess was taken at 3:15 p.m.)

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2 THE COURT: Mr. Clark, I did anticipate that
3 there would be a contempt proceeding, but I was just unable to
4 refresh my recollection on the law. Because, as I told you,
5 I am hearing another matter that needs immediate attention. From
6 the government's point of view, what is the procedure that should
7 be followed?

8 MR. CLARK: Well, your Honor, I think, at this
9 time I have prepared affidavits, application to compel handwriting,
10 an affidavit and an order for your Honor to sign. In the
11 affidavit I state that Mr. Meadows refused before the grand jury
12 to produce the exemplars requested. I would submit these to the
13 Court. If necessary, the grand jury foreman is sitting next door
14 and can come in on just a moment's notice to indicate that Mr.
15 Meadows did in fact refuse his request on behalf of the grand
16 jury. At that time I would request that your Honor sign this
17 order compelling the exemplars, and if there's a stated intention
18 at that point to refuse to comply with your Honor's order, then
19 we would request that Mr. Meadows be held in contempt.

20 THE COURT: Has Mr. Herrmann been given copies
21 of the moving papers?

22 MR. CLARK: He has, your Honor. He has.

23 THE COURT: May I see the moving papers?

24 All right, would you like to be heard, Mr.
25 Herrmann?

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2 MR. HERRMANN: Yes, your Honor. I don't think
3 any foundation can be made for this without the grand jure fore-
4 man.

5 THE COURT: Yes. We'll bring him in

7 G E O R G E E . B I T G O O D , of 15 Wild Apple Lane, Old
8 Saybrook, Connecticut, having been first duly sworn,
9 testified as follows:

10 THE COURT: Mr. Bitgood, keep your voice up,
11 if you would, please.

12 THE WITNESS: O.K.

13 DIRECT EXAMINATION BY MR. CLARK:

14 Q Mr. Bitgood, are you the foreman of the grand jury
15 sitting in New Haven today?

16 A Yes, I am, sir.

17 Q That's a federal grand jury for the District of
18 Connecticut?

19 A Yes, sir.

20 Q And in conjunction with your duties as foreman did you
21 have occasion to have appear before you today one Marion Meadows?

22 A Yes, I did.

23 Q At the government's request did you direct Mr. Meadows
24 to provide handwriting exemplars and major case fingerprints?

25 A Yes, I did, sir.

2
3 Q What was Mr. Meadows' response to your request or di-
rection?

4 A He denied my proposal.

5 MR. CLARK: I have no further questions.

6 BY THE COURT:

7 Q Do you recall what he said, as best you can recollect?

8 A No. I may have written it down.

9 Q But there is no question in your mind he refused to
10 give --

11 A He did.

12 Q -- exemplars?

13 A Yes, sir.

14 THE COURT: All right, Mr. Herrmann, would you
15 like to ask some questions?

16 MR. HERRMANN: Yes, I would, your Honor.

17 THE COURT: Yes.

18 CROSS-EXAMINATION BY MR. HERRMANN:

19 Q Mr. Bitgood, have you seen today or at any other time
20 a paper writing that appears to be a note that might have been
21 used in the bank robber?

22 MR. CLARK: Object, your Honor. I think we're
23 getting into the secrecy of the grand jury.

24 THE COURT: Well, I will allow him to answer
25 yes or no as to whether he has seen that. That much has been

2
disclosed in open court.3
Have you seen the note that was used in the bank
4
robbery?5
THE WITNESS: No, I haven't.6
Q Have you seen any paper writing at all that in any way
7
resembles or looks like or could be a note that was used in the
8
bank robbery?9
A No.10
Q Do you have in your possession or in your custody or
11
under your control any paper writing of any kind or nature or
12
any kind of a writing of any kind or nature that could have been
13
used in the bank robbery?14
A No, I don't.15
Q Did anybody else on the grand jury in your presence
16
see or was shown any such note as I just referred to?17
A No, sir.18
Q Excuse me?19
A No, sir.20
Q No. Do you -- have you seen anything, paper or writing
21
of any kind, which looks like a bank withdrawal slip with that
22
writing on it?23
A No, I didn't, sir.24
Q You have not. Did anybody on the grand jury, of which
25
you are foreman, in your presence look at or were they shown such

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Bitgood / Cross

2 a withdrawal slip?

3 A No, sir.

4 Q Do you have, sir, in your possession, custody or under
5 your control any such paper, writing, withdrawal slip or anything
6 that looks like a bank withdrawal slip?

7 A No, I don't, sir.

8 Q Do you, Mr. Bitgood -- or have you seen -- excuse me.
9 I'll withdraw that. Have you seen, Mr. Bitgood, any copies of
10 fingerprints, something that would like a fingerprint?

11 A No, I haven't seen it.

12 Q You haven't seen nothing like that. Was anybody on the
13 grand jury, of which you are serving as foreman, shown any such
14 things, such copies of fingerprints in your presence?

15 A No, sir.

16 Q Do you have in your custody or possession or under your
17 control copies of any kind or originals of any kind of anything
18 that looked like fingerprints?

19 A No, sir.

20 Q Would you know, sir, what this phrase means -- and I
21 am reading here -- "Latent prints of value"? And I assume "prints"
22 means fingerprints. Do you understand what that means? "Latent
23 prints of value"?

24 A I would like you to explain that, sir.

25 A I don't understand what it means. I just wanted to know

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2 if you do. If you understand it. You can just say yes or no.

3 A Latent prints?

4 Q Latent prints. Meaning, fingerprints of value?

5 A Fingerprints that were left and would be of value in
6 an investigation, I assume.

7 Q Do you know what that means?

8 A Evidence.

9 Q That's your answer.

10 MR. HERRMANN: All right, I have no further
11 questions, your Honor.

12 THE COURT: Mr. Clark?

13 MR. CLARK: No, your Honor.

14 THE COURT: You may object to this question,
15 Mr. Clark -- you may not -- but, as foreman of the grand jury why
16 did you ask Mr. Meadows to give you the exemplars? Do you know
17 why you are asking for the exemplars? Do you know what is to be
18 done with them?

19 THE WITNESS: It was my understanding they were
20 to be used in evidence.

21 THE COURT: Before the grand jury?

22 THE WITNESS: Eventually.

23 MR. HERRMANN: Pardon?

24 THE COURT: He said "eventually."

25 Is it your understanding that the need for these

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Bitgood

2 exemplars comes about as part of your investigation into this
3 bank robbery?

4 THE WITNESS: Yes, sir.

5 THE COURT: There is no question in your mind
6 about that?

7 THE WITNESS: No question.

8 THE COURT: Thank you, very much, Mr. Bitgood.

9 (The witness was excused at 4:10 p.m.)

10 MR. HERRMANN: May I just say, your Honor, with
11 all due respect, I think the last question was most leading.

12 THE COURT: Yes. Your comment is noted.

13 MR. HERRMANN: Just make it -- my objection
14 on the record.

15 THE COURT: Yes. All right, now, Mr. Clark,
16 what do you suggest at this point?

17 MR. CLARK: Well, I would request, first of
18 all, that your Honor sign the order compelling the production of
19 fingerprints. I think we have laid a foundation. I think we
20 should then elicit from counsel whether his client intends to
21 comply with that this afternoon, and if not, the government would
22 ask that he be held in contempt of court for refusal of a direct
23 order of the Court in the Court's presence.

24 THE COURT: All right, I will sign the order.

25 Does he have to be brought back into the jury room?

4 MR. CLARK: I think not, your Honor. At this
5 point it's the order of the Court that he comply with what the
6 grand jury has told him to do. He's already refused the grand
7 jury once.

8 THE COURT: Well, now that he has a written
9 order signed by the Court he may change his mind, so I will sit
10 here on the bench. Would you let me know if there if he changes
11 his mind when he is brought before the grand jury? If he does
12 change his mind, then everything is moot. If he has not, then
13 I will hear you on where we go from here. And I will hear counsel
14 for the defendant.

15 I will sign this and put the time down.

16 Mr. Meadows, so there will be no misunderstand-
17 ing, what I have signed is an order directing you to present
18 yourself before the grand jury in the room next door, and I
19 direct and order you to provide handwriting exemplars and major
20 case prints as requested by the foreman of the grand jury.

21 MR. CLARK: I think we could perhaps specify
22 to your Honor that quite obviously that can't be done in the
23 grand jury. That if the foreman directs that it be done in the
24 marshal's office, that he be fingerprinted in the marshal's
25 office and the exemplars be given there also.

26 THE COURT: Yes. That you comply with the
27 request of the foreman to provide him with handwriting exemplars

2 and major case prints in the manner recommended by the foreman so
3 that these exemplars and prints can be used before the grand jury
4 in their investigation.

5
6 MR. CLARK: I will take Mr. Meadows into the
grand jury now.

7 THE COURT: Yes.

8 (Suspension of proceedings from 4:15 p.m. to
9 4:17 p.m.)

10 MR. CLARK: Mr. Meadows did again refuse, your
11 Honor. Do you think it's necessary to bring in the foreman again?

12 THE COURT: Do you wish the foreman to be
13 brought in again, Mr. Herrmann? Maybe, in excess of caution, we
14 should.

15

16 G E O R G E E. B I T G O O D, resumed.

17 THE COURT: Mr. Bitgood, you should consider
18 yourself still under oath.

19 BY MR. CLARK:

20 Q You are the same Mr. Bitgood, the foreman of the grand
21 jury that testified a few minutes ago?

22 A Yes, sir.

23 Q And was Marion Meadows once again brought before the
24 grand jury and requested to provide the handwriting exemplars
25 and fingerprints?

A Yes, sir.

Q And what was his response?

A He -- on advice of counsel, he decided to use the Fifth Amendment.

Q Did he in fact refuse to provide the documents -- or the exemplars that you ordered?

A Yes.

MR. CLARK: Nothing further.

THE COURT: Mr. Herrmann, any questions?

MR. HERRMANN: No, I have no questions, your Honor.

THE COURT: Very well, Mr. Bitgood.

THE WITNESS: Thank you.

THE COURT: Does the government have an application?

MR. CLARK: An oral application, your Honor, that Mr. Meadows be held in contempt.

THE COURT: Mr. Herrmann?

MR. HERRMANN: If it please the Court, the contempt procedure requires a finding, with due respect, that the refusal is without just cause. It's not merely the refusal, but it must be a refusal without just cause.

At this point of the proceedings we have set down for next Tuesday, October 12th, at ten a.m. a hearing on the

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2 question of the legality of some of the evidence which the govern-
3 ment may have that remains to be heard. That's a serious consti-
4 tutional right of the defendant, which remains to be heard.

5 Secondly, I think it's quite clear from the
6 testimony of the grand jury foreman that th . is not a grand
7 jury investigation, but and FBI and U. S. Attorney investigation.
8 And that Mr. Meadows can stand upon his Fifth Amendment rights in
9 that respect. Because this is a police investigation, this is
10 not a grand jury investigation. The grand jury foreman has
11 nothing. Doesn't even know, really, what this is all about.
12 The exemplars are for comparison only. He's not going to compare
13 them to -- what's he going to compar them to? In addition to
14 the fact that it may develop next Tuesday that if ther is any-
15 thing to compare them to, they may have been illegally taken and
16 inadmissible in evidence.

17 And we also have on the witness' behalf the
18 right to move to suppress whatever illegal evidence there may be,
19 which, of course, it just came to my attention. I haven't had
20 time. But we have a right to suppress it even at this stage of
21 the proceedings.

22 So I request that this matter be adjourned
23 until Tuesday, when I will appear here, Mr. Meadows will appear
24 here, and we can argue the illegality questions. That may make
25 the whole thing academic. There may be nothing left to compare,

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2 and then his refusal will not have been without just cause.

3 THE COURT: Mr. Clark?

4 MR. CLARK: Well, I'd say two things, your Honor.

5 The hearing next Tuesday, first of all, will not go into the merits,
6 I don't believe, of the search. I think it will go into whether
7 a hearing is necessary.

8 Secondly, in view of the fact that there was the
9 withdrawal slip left in the bank, the merits of the search at the
10 home are irrelevant. There will be nothing left to compare with,
11 in any event.

12 Finally, I think that this is a matter which in
13 the administration of justice should be dealt with promptly. That
14 it should not be set off for a hearing in the future. I think
15 there was a contempt of the Court's order in the Court's presence
16 this afternoon, and I think that that should be dealt with accord-
17 ing to law, and that Mr. Meadows should be held in contempt for
18 refusal of the order of the grand jury and your Honor's order.

19 THE COURT: What sanctions does the government
20 propose?

21 MR. CLARK: I propose that Mr. Meadows be in-
22 carcerated until he complies with the order, until the life of
23 the grand jury, or at some future point, the point of incarcera-
24 tion is something that could be determined. However, there's an
25 ongoing refusal today and I think that steps should be taken to

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2 deal with that today.

3 THE COURT: See, I really don't see the sig-
4 nificance of the hearing on Tuesday concerning the witness' re-
5 fusal to supply exemplars today. As I noted previously, the
6 government, facially, has a right to compare the exemplars to
7 the withdrawal note in the bank. Whether it can thereafter use
8 the exemplars to compare with the handwritten note found in or
9 near the home of the defendant is left open, but there is cer-
10 tainly an avenue which the Court has already determined to be a
11 proper aspect of the grand jury's investigation and which the
12 defendant has refused to comply with, and, therefore, it seems
13 to me to be a clear case of contempt.

14 MR. HERRMANN: Well, your Honor, I disagree. Be-
15 cause, number one, there's been nothing that has been established
16 yet at to the note -- I mean as to the withdrawal slip. They
17 have already admitted right here in open court -- they have ad-
18 mitted that there could be an illegal search and seizure as to
19 the alleged note.

20 Now, when you get into that kind of a point
21 where they have already admitted possible illegal conduct, I
22 don't think, when you're talking about a man's freedom and a
23 man's rights, and you're talking about the Bill of Rights, and
24 you're talking about the United States Constitution, that you
25 can start in putting little corners and saying, "Well, you've

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one thing here and not another thing here." I think this is a
3
very big overall, very important question. And all Mr. Clark
4
says is, "Well, the note was found at the bank." I am not say-
5
ing that he would lie to the Court, I wouldn't say for a minute
6
that, but we all know that's no evidence of anything in particu-
7
lar. The fact that Mr. Clark says -- you know, that's the way
8
it was. He already admits that there could be an illegal search
9
as far as this alleged note is concerned. And we all know that
10
is evidence. Because it goes the other way.

11
And you're dealing here with a very fundamental,
12
basic constitutional right. And if there is illegality here,
13
then the Court is being asked to join into it and approve it,
14
which is in the case which I cited to your Honor before, the In
15
Re: Grand Jury Proceedings, Harrisburg, Pennsylvania, in 450
16
Federal 2nd 119. They specifically go into that. And they even
17
mention in there -- or in the Silverthorn case -- about while
18
you're interrupting and it might take time and it might delay
19
matters. And the Court says: So be it. When you come to im-
20
portant, basic, fundamental constitutional rights, well, then,
21
you take time, and then you do interrupt, it doesn't happen too
22
often, and you just can't give anybody a short shrift when it
23
comes to these fundamental rights.

24
And the Court says the primary thrust of the
25
Bill of Rights is to shield citizens from certain actions by the

2 government. The implication of judicial remedies to provide
3 this shield follows naturally from the declaration of the right.
4 And this was in Grand Jury Proceedings.

5 Now, I see no harm in -- Tuesday -- going through
6 this question on the illegality. Because if the search is il-
7 legal and if these documents cannot be used, I intend to move
8 to suppress them. They will have nothing to compare it to at
9 all. Right now the grand jury foreman has nothing anyway, but
10 he'll certainly have nothing and the whole matter will be academic.

11 I think it's unfair at this point to hold this
12 man in contempt and coerce him and twist him and punch him and
13 so on before we've had our full day in court. After we've had
14 our full day in court, that's a different ballgame.

15 THE COURT: The issue at the present time is
16 not whether or not the Court should have signed the order. The
17 order has been signed. The question is has he willfully and
18 knowingly violated the Court's order. It is crystal clear that
19 he has. There is no indication that he did not understand the
20 order, there is no indication that he misinterpreted the order,
21 and there is every indication that he willfully violated the
22 order.

23 Therefore, I find him in contempt. I order him
24 to be confined during the life of this grand jury unless he
25 purges himself of the contempt order prior thereto.

What is the life of the grand jury?

MR. CLAPK: The grand jury first sat, I believe, on September 27th, your Honor. It would be 18 months from that date.

THE COURT: That is the Court's order.

MR. HERRMANN: May I have an exception on the record to that, your Honor? And I would like to file an appeal on it and request a stay until I file the appeal.

THE COURT: Mr. Clark?

MR. CLARK: I don't think a stay would be appropriate, your Honor.

THE COURT: I will order a stay until the witness has an opportunity to present the matter to the Court of Appeals, which, I take it, can be done within the next few days. Certainly, it would seem to me, by Monday.

Therefore, I will order a stay of the Court's order until ten o'clock Tuesday of next week, October 12th, at which time the defendant shall present himself in court not only for the hearing which is scheduled, but also to submit himself to the marshals, unless he purges himself or unless the Court of Appeals sets the order of the Court aside.

The stay is granted until ten o'clock, Tuesday, October 12th, at which time the defendant shall present himself in this courtroom.

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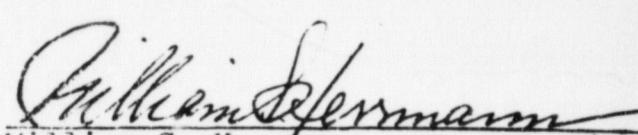
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

- - - - -
IN RE MARION E. MEADOWS and GRAND : MISCELLANEOUS NEW HAVEN
JURY PROCEEDINGS, NEW HAVEN, : ~~NY-76-343~~
CONNECTICUT : NOTICE OF APPEAL
- - - - -

NOTICE IS HEREBY GIVEN that Marion E. Meadows, the person above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final order of the United States District Court for the District of Connecticut that ordered the said Marion E. Meadows to give and provide handwriting samples and major case prints (fingerprints) in the above proceedings and from the final order of the said United States District Court for the District of Connecticut finding the said Marion E. Meadows in contempt of the said Court for refusing to give and provide same and ordering him to be held in custody until he complies with the said order of the said Court or until the end of the term of the Grand Jury and from the final order of the said United States District Court for the District of Connecticut which denied the motion of said Marion E. Meadows to quash the subpoena in the above proceedings.

Dated: Stamford, Ct.

October 7, 1976


William S. Herrmann
Attorney for Marion E. Meadows
Office & P.O. Address
16 Oak Street
Stamford, Ct. 06905
Tel.: (203) 327-9988

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1
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF CONNECTICUT
4

5 In the Matter of:

6 GRAND JURY PROCEEDINGS : MISCELLANEOUS NH-116
7 CONCERNING MARION MEADOWS. :
8

9

10 New Haven, Connecticut
11 Tuesday, October 12, 1976

12 Before:

13 HONORABLE ROBERT C. ZAMPANO, U.S.D.J.

14 Appearances:

15
16 PETER CLARK, ESQ.
17 Assistant United States Attorney
18 New Haven, Connecticut

19 WILLAIM S. HERRMANN, ESQ.
20 Attorney for Marion Meadows
21 16 Oak Street
22 Stamford, Connecticut 06905

23
24 Gerald Gale
25 Reporter

THE COURT: In the matter of Grand Jury
proceedings concerning Marion Meadows, Miscellaneous No-116.
Are the parties ready to proceed?

MR. HERRMANN: Yes, your Honor.

MR. CLARK: Yes.

THE COURT: I think at the outset you should inform the Court as to what has occurred since we were last together on October 5th. I believe at that time there was an indication that Mr. Meadows would seek appellate review of the orders entered on October 5th.

MR. HERRMANN: I filed with the Court a Notice of Appeal. It should already be here. I have a copy for the Court, if I can find it.

THE COURT: You mean you are taking the usual and ordinary channels of appeal?

MR. HERRMANN: I have checked and they said that's the way you have to do it. I filed this -- it's an extra copy. I don't know if you want it marked as an exhibit.

THE COURT: Are you informing the Court that you attempted to have either a single judge or a panel of the judges of the Court of Appeals hear this matter expeditiously and you were informed it was not possible?

MR. HERRMANN: Not in those words. I checked with the Court of Appeals in New York, with the appellate

1 clerk down there; then I checked with the appellate clerk
2 in this Court, and they -- I was informed that the only way
3 that they knew of taking an appeal, that the appeal must be
4 filed in this Court with the filing fee, which I did, and
5 then they said then I would get the forms C and D -- I
6 don't remember the letters -- and then that had to be filed
7 in the U. S. Court of Appeals with the \$50 filing fee, and
8 then it would proceed from there.

9 I also asked the Court of Appeals clerk
10 about a stay, and they said that their usual proceeding,
11 as far as they were concerned, was that the stay usually
12 comes from the trial Court, from this Court.

13 However, if this Court wouldn't give a
14 further stay, then the application would be made to them
15 for the stay, and they said that was their procedure, so I
16 followed it promptly. That's been filed in this Court. I
17 mailed it out. Didn't you get a copy, Mr. Clark?

18 I mailed a copy to the United States Attorney,
19 so probably it didn't go through the channels to get down to
20 Mr. Clark there.

21 THE COURT: How do we proceed this morning?

22 MR. CLARK: Mr. Herrmann has the floor,
23 your Honor. It's his motion.

24 MR. HERRMANN: If you want me to continue,
25 I have some things which I would like the Court to take

1 under consideration.

2 I request the Court to take this under
3 consideration, because I think the Court in its order at
4 the last hearing was mistaken, and what I invite to the
5 Court's attention is in the transcript on Page 53, Lines
6 15 through 25, the Court states -- I will have Mr. Clark
7 read it with me -- it's the only copy I have -- the Court
8 states that:

9 "The issue at the present time is not whether
10 or not the Court should have signed the order. The order
11 has been signed. The question is: Has he wilfully and
12 knowingly violated the Court's order? It is crystal clear
13 that he has. There is no indication that he did not under-
14 stand the order. There is no indication that he misinterpreted
15 the order and that there is every indication that he wilfully
16 violated the order; therefore, I find him in contempt," and
17 I quoted from Page 53 of the transcript.

18 I respectfully submit to the Court that this
19 is not the question. Now that the question of illegal
20 evidence has arisen, especially, but the question is this:
21 Has the witness refused without just cause shown to comply
22 with an order of the Court, and for that I cite 28 U.S. Code
23 Section 1826A and Gelbhart against the United States 408 U.S.
24 41 at Page 45.

25 Then the Gelbhart case, it was specifically

1 held, specifically held that as follows, at Page 60, 408 U.S.
2 60, the general rule is illustrated in Blue, which is the
3 case they are referring to, the United States against Blue,
4 384 U.S. 251, is that a defendant is not entitled to have
5 his indictment dismissed before trial simply because the
6 Government has acquired incriminating evidence in violation
7 of the law even if the tainted evidence was presented to the
8 Grand Jury.

9 But that rule has nothing whatever to do with
10 the situation of a Grand Jury witness who has refused to
11 testify and attempted to defend the subsequent charge of
12 contempt. So that there is a big issue here as to whether
13 this witness is in contempt, as I contend, and the issue is,
14 does he have just cause, and illegal search and seizure is
15 just cause, and he is entitled to a hearing to show that.

16 And Gelbhart against the United States
17 specifically so holds.

18 THE COURT: But I thought I made it perfectly
19 clear that the order I issued for him to give exemplars
20 pertain to a comparison of those exemplars with the with-
21 drawal slip at the bank.

22 The question as to whether or not the Government
23 can also use those exemplars to compare them with the alleged
24 illegal seizure of the note remains open.

25 Now, I carefully defined that in the October 5,

1 1976 hearing.

2
3 MR. HERRMANN: However, your Honor, I would
4 like to speak to that. I think that also is mistaken in
5 view of this rule, because --

6 THE COURT: Let's try it this way. Assuming
7 that the note was seized illegally and I suppress it, how
8 is that a defense to his refusal to give exemplars with
9 respect to another specimen that was not illegally --

10 MR. HERRMANN: Number one, your Honor, there
11 has been no establishment of where the other specimen came
12 from. That's number one. The U. S. Attorney says that he
13 heard from somebody in the FBI who heard from somebody else
14 that this withdrawal slip was found in the bank. That's not
15 evidence of anything. That's number one.

16 Number two, you can't use directly or indirectly
17 what you get from an illegal search, so you can't use the
18 illegal material plus you can't use the fruits of it.

19 In other words, if --

20 THE COURT: How could these notes, even if
21 illegally seized, be the fruits of an illegal search at the
22 bank where the evidence as set forth by the assistant U. S.
23 Attorney is that the robber left the note, left the withdrawal
24 slip at the bank with a teller, how could that possibly
25 be illegal?

 MR. HERRMANN: No. If that's so, which I

7

don't concede they have ever proved that, because we don't know; however, if that is so, if they haven't got the note, assuming that you suppress it, they haven't or they can't use it because it's a proper question on the contempt proceeding, aside from suppression, assuming they can't use it, there is nothing to connect him at all to this.

Why call him on the withdrawal slip? Why not call me, why not call somebody else? You have no way of -- why pick him out of the air, as was said in re: Grand Jury proceedings in Harrisburg, Pennsylvania, 450 Fed. 2nd, 199 at Page 210, the Government should be prevented from forcing the witness to give evidence that would not be asked for but for the illegal search.

THE COURT: We have been through all that --

MR. HERRMANN: I am just --

THE COURT: -- (continuing) October 5th.

What we are here this morning is solely as to whether or not your motion with respect to the notes should provide further business for the Court; in other words, I have ordered this witness to submit himself to the Grand Jury to supply exemplars to compare with the withdrawal slip.

I do not wish reargument on that. You have already filed a notice of appeal on that and we will proceed now to the remaining question, and that is: Can the Government compare the exemplars to the note?

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1 MR. HERRMANN: My answer, your Honor, is no,
2 because it seems that the Court is taking the position that
3 there are two questions here, and there is only one question.
4

5 There is only one question, and the question
6 is: Can the Court on the petition of the executive depart-
7 ment sentence a witness who was the victim of an illegal
8 search and seizure to jail for refusal to participate in the
9 exploitation of that crime and in violation of the Fourth
10 Amendment of the Constitution of the United States?
11

12 There is only one question.

13 THE COURT: I already overruled you with
14 respect to the withdrawal slip.

15 MR. HERRMANN: All right. I just wanted to
16 make it clear on the record.

17 THE COURT: Now we get to the note.

18 MR. HERRMANN: That's my argument as to the
19 note. There is only one question, the whole thing goes
20 together. The whole thing goes together.

21 THE COURT: What do you have to say, Mr.
22 Clark?

23 MR. CLARK: It seems to me that U. S. versus
24 Colandra is on point.

25 I think that the question of the search and
seizure should not be litigated now. There is a perfect
remedy at such time when the Grand Jury will return an

1 indictment, and maybe they won't.

2 THE COURT: Do I understand counsel to have
3 no other cases to present to the Court but U. S. versus
4 Colandra and the Gelbhart case as leading cases?

5 MR. HERRMANN: I have other cases.

6 THE COURT: Do you have it in brief form
7 or --

8 MR. HERRMANN: I can cite them to the Court.

9 THE COURT: All right.

10 MR. HERRMANN: Gelbhart against the United
11 States, which affirms in re Grand Jury proceedings, Harrisburg,
12 Pennsylvania, which is 450 Fed. 2nd, 119, the two leading
13 cases on it have modern application.

14 The other leading case on illegal search and
15 seizure, in fact, the basic leading case is Silverthorne, --
16 with an "e" on the end of it -- Silverthorne Lumber Company
17 against the United States, 251 U. S. 385, which is cited --

18 THE COURT: Just one moment --

19 MR. HERRMANN: Which was cited with approval
20 in Nardone against the United States, 308, U. S. 338 at Page
21 340, for the proposition that direct methods and indirect
22 are also forbidden.

23 The leading exposition on illegal search and
24 seizures, which I would request your Honor to read, and which
25 has been cited time and time again, the dissenting opinions

1 of Mr. Justice Brandeis and Mr. Justice Holmes in the case
2 of Olmstad against the United States -- it's in the Supreme
3 Court Reporter, in 48 Supreme Court. I haven't got the
4 official citation at my fingertips.

5 48 Supreme Court 569, but I have to find the
6 official one. We can come back to that.

7 I have an extra copy of the dissent.

8 THE COURT: Thank you.

9 MR. HERRMANN: That's the Brandeis and Holmes.
10 I would also like the Court to take under consideration, in
11 addition to this, in connection with the affidavits of the
12 Assistant U. S. Attorney, the Code of Professional Responsibility,
13 D. R. 7-1023, D. R. 7-103 B, D. R. 7-106C, 3 and 4, and also
14 the professional responsibility report of the joint conference,
15 44, American Bar Association Journal 1159 at 1218 and A. B. A.
16 opinion, 150, which is in 1936, and in connection with that I
17 would ask the Court to refer to the statements of Judge
18 Friendly as to the responsibilities of the United States
19 Attorney in Grant against the United States 282, Fed. 2nd,
20 165, which is the Second Circuit in 1960.

21 As to the fruits of the lawful search, of
22 course, Map against Ohio, with which we are all familiar,
23 367 U. S. 643, at 659.

24 One other point I would like to present,
25 although your Honor has ruled on it, and I know you have

1 ruled on it, and just will take me a minute, that it's been
2 held since ancient times that the Grand Jury is a judicial
3 inquiry and a part of the judicial process, and this from what
4 we have developed here appears to be an executive proceeding
5 and not judicial, the Grand Jury foreman doesn't know what's
6 going on, the U. S. District Attorney makes affidavits on
7 hearsay, he doesn't reveal the source of his hearsay.

8 The question of the illegal search was
9 suppressed until the eleventh hour, and I think the whole
10 proceeding was, as it went along, until it developed last
11 time, it was subterfuge. We got no information.

12 Now, one other thing, in the Mara case,
13 Dinesio case, which is so heavily relied upon, in the Mara
14 case in the note, the Court notes that the writings were in
15 the Grand Jury's possession and in the Dinesio case, which
16 was a wiretapping case, and the Grand Jury wanted voice
17 exemplars, the wiretap which was legal, was done pursuant
18 to a warrant, was placed as an exhibit before the Grand
19 Jury, before the questions, so in both those cases, differ
20 considerably from this.

21 I think that by these proceedings the civil
22 rights of my client are being woefully abused. I think
23 that the subpoenas issued and the suppression of all of
24 this information have injured him, and I think the capias
25 was issued with false allegations and also with suppression,

1 and I think his civil rights have been gravely injured.
2

3 As I requested your Honor to reconsider, that
4 is denied, and the only thing that I can say is that I have
5 filed the appeal, I will process it promptly, and I ask for
the stay to continue until the appeal is disposed of.

6 THE COURT: Mr. Clark.

7 MR. CLARK: The only case really that I would
8 like to cite in addition to Colandra is in re Mellilo,
9 529 Fed. 2nd, 770, which is a Second Circuit case, and
10 they state specifically that citing Colandra for authority,
11 it had been held that the Grand Jury may ask questions based
12 on evidence seized in violation of the Fourth Amendment.

13 THE COURT: Let's put things in perspective
14 here. I have already ruled that the witness must submit
15 himself to the Grand Jury to supply handwriting exemplars
16 and be fingerprinted with respect to the withdrawal slip
17 that was left at the bank by the robber.

18 The question left open this morning was: Can
19 the exemplars and the fingerprint evidence also be compared
20 to a note that was found either in or near the residence of
21 the witness, in light of the claim of the witness that the
22 note was illegally seized.

23 Now, the Government apparently is taking the
24 position that it need not show that the note was legally
25 seized but that even assuming it was illegally seized, that

1 the Grand Jury can utilize this evidence in their considera-
2 tion of returning an indictment with respect to an armed
3 robbery; is that your position?

4 MR. CLARK: Exactly. We do not concede there
5 was an illegal search. I am saying, as you pointed out, it
6 makes no difference from our point of view.

7 THE COURT: My position right now is merely
8 to determine as a matter of law, even assuming the illegality
9 of the seizure, the right of the Grand Jury to have that
10 note so that it could compare it with the handwriting of the
11 witness; is that correct?

12 MR. CLARK: That's correct.

13 THE COURT: I will rule on the issue as a
14 matter of law and I will reserve.

15 The question now is that at this time, at
16 least from my point of view, he is in contempt of the order,
17 that is the order that he submit himself for handwriting
18 exemplars and fingerprints to be compared with a withdrawal
19 slip that was left at the bank by the robber and handed to the
20 teller.

21 Where do we go with respect to that part of
22 my order which in my opinion he has clearly violated?

23 MR. CLARK: Yes, I think that Mr. Meadows is
24 in contempt. Your Honor has held him in contempt and I think
25 that bail, pending an appeal to the Second Circuit would be

1 inappropriate.

2 The Mellilo case states that bail in a proceed-
3 ing of this nature is inappropriate unless it's clear that
4 the appeal is not frivolous. I think from all the proceedings
5 that have gone here, quite clearly the appeal with respect to
6 that portion of the order is frivolous.

7 THE COURT: What is the present status of the
8 Grand Jury with respect to this investigation? Are they
9 in session?

10 MR. CLARK: They are not. They come in
11 approximately every three weeks.

12 THE COURT: So that they are due back --

13 MR. CLARK: It would be somewhere in early
14 November, I would think. We don't have a definite schedule.
15 We summon them in when the need arises.

16 THE COURT: When do you intend to call them
17 back? Let me tell you what I have in mind. I will grant
18 him a stay of the order of commitment that I entered until
19 the time the Grand Jury resumes its investigation of this
20 robbery; in other words, I will give him a chance to purge
21 himself at that time, but obviously, he can't purge himself
22 now if I incarcerate him, because the Grand Jury is not
23 sitting.

24 MR. CLARK: He can purge himself by furnishing
25 the exemplars, your Honor.

1
2 THE COURT: I think I would prefer to do
3 it by a date certain.
4

5 Now, would you believe that your investigation
6 will continue in early November of this robbery?
7

8 MR. CLARK: An approximate time --
9

10 THE COURT: All right. The Court will reserve
11 decision on the issue as the Court frames it. I see no issue
12 whatever with respect to the violation of the Court's order
13 by this witness with respect to the withdrawal slip.
14

15 I granted a stay on October 5th, until this
16 morning at ten o'clock with respect to that aspect of the
17 order. Now, at that time I stated I would order a stay until
18 the witness has an opportunity to present the matter to the
19 Court of Appeals, which I take it can be done within the
20 next few days, and thereafter, I stated I will order a stay
21 of the Court's order until ten o'clock Tuesday of next week,
22 no October 12th.
23

24 Obviously, counsel is having some difficulty
25 in getting this matter before a panel of the Judges. I will,
therefore, order a stay until November 1st at 12 noon, at
which time the witness shall present himself to the Marshal
in New Haven for commitment during the life of the Grand
Jury, unless he purges himself of the contempt order prior
thereto.

If he does not purge himself prior thereto and

2 counsel wishes to pursue this matter on appeal and obtain a
3 further stay, that stay must be obtained from the Court of
Appeals.

The Grand Jury is investigating an armed
robbery, and I see no reason why that investigation should
be delayed beyond November 1st by the appellate process
unless the Court of Appeals so orders.

In my view, I have given him plenty of time
to either purge himself or to obtain relief from the Court
of Appeals by my order delaying commitment until November
1st at 12 noon.

I, therefore, again order the witness to
13 appear before the Grand Jury and provide handwriting
14 exemplars and fingerprints so that those handwriting
15 exemplars and fingerprints may be compared to the withdrawal
16 slip left at the bank by the robber.

Whether or not the Government can compare the
exemplars and fingerprint specimens to the note, I reserve
on that question.

20 MR. CLARK: May I request a slight
21 modification of your ruling, your Honor? I think it's
22 impractical to have the witness provide those exemplars in
23 front of the Grand Jury, and I think, as we requested last
24 time, and as your Honor agreed with us, the order would be
25 couched in terms of providing them to an agent of the Federal

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1 Bureau of Investigation, perhaps in the Marshal's office,
2 who would be acting as the agent of the Grand Jury.
3

4 THE COURT: Yes. My order did say that the
5 witness should comply with the request of the Foreman to
6 provide him with handwriting exemplars and major case
7 prints in the manner recommended by the Foreman, so these
8 exemplars and prints can be used before the Grand Jury in
9 their investigation. That order still is incorporated in the
10 order I again issued this morning.

11 MR. CLARK: Thank you.

12 MR. HERRMANN: May I correct the record a
13 minute, your Honor?

14 Your Honor mentioned this is an investigation
15 of an armed robbery. It's not. It's not an armed -- there
16 was no arms or weapons of any kind so far as I understand.
17 It's an investigation of a purported bank robbery but not
18 armed robbery.

19 One other thing --

20 MR. CLARK: I think it's semantic, your Honor.
21 The note Said: "I will kill you if you don't give me money,"
22 essentially, so there was show of violence --

23 MR. HERRMANN: I would like to put my objection
24 on the record that the appeal is frivolous. I never took a
25 frivolous appeal in my life and I am not going to start now.

26 THE COURT: The record so notes I did not

1 concur in Mr. Clark's characterization. I will leave it
2 to the Court of Appeals to decide.
3

4 MR. HERRMANN: May I have the transcript
5 back?
6

7 THE COURT: Yes.
8

9 (Whereupon, this hearing was concluded.)
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----x
UNITED STATES OF AMERICA

- versus - : Criminal Action
MARION MEADOWS : No. N-76-342
-----x

United States Court House
New Haven, Connecticut
October 28, 1976

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

Appearances:

For the Government

PETER A. CLARK, A.U.S.D.A.
270 Orange Street
New Haven, Connecticut

For the Defendant

WILLIAM HERRMANN, Esq.
16 Oak Street
Stamford, Connecticut

1
2 THE COURT: In the case of the United States
3 versus meadows, are the parties ready to proceed?

4 MR. CLARK: Yes, your Honor.

5 MR. HERRMANN: This is the application to the
6 Court.

7 THE COURT: You may proceed.

8 MR. HERRMANN: Right, your Honor. Simply, I was
9 notified by the United States Court of Appeals that the soonest
10 they can hear my motion for the emergency stay is November 9th
11 and that they're putting it on the calendar for that date and
12 the U. S. Court of Appeals requested that I request this Court
13 to extend the stay which you had granted to November 1st to
14 November 9th -- or until they decide the motions, not the ap-
15 peal; till they decide my motion for the stay -- and that I would
16 make such request to you and then advise the U. S. Court of Ap-
17 peals. They wanted me to advise them of your decision.

18 THE COURT: You say they advised you. How did
19 they do that?

20 MR. HERRMANN: The Clerk of the U. S. Court of
21 Appeals, Mr. Arthur Heller, telephoned me yesterday, and he said
22 that they had this problem because of the holiday or something,
23 that they couldn't put the matter on until November 9th for a
24 hearing, and that they would -- they requested that I ask this
25 Court -- you -- for a stay until the 9th or until they decide

1
2 it and that I should get back to them.

3
4 I called your chambers yesterday and spoke with
5 Miss Peck and then I spoke with her again this morning, and
6 then I notified Mr. Heller, again of the district court, that I
7 was coming up here and making the motion to you, as I have, and
8 then as soon as you make your decision I have to telephone him
9 and let him know what the decision of this Court is. If it's
10 in the affirmative, that will be -- end the matter as far as
11 they're concerned. If it's in the negative, then they will
proceed down there.

12 THE COURT: Mr. Clark.

13 MR. CLARK: Your Honor, I oppose this motion
14 simply because I think it's filed for the purposes of delay.
15 This witness has been under this order since at least October
16 12th and it's a passage of more than two weeks before this
17 simple motion for a stay has been filed. I think it could have
18 been filed a long time ago -- the matter resolved. I think
19 any further delay just reduces the power of the grand jury to
20 conduct its investigation and erodes the authority of this
21 Court and its contempt powers.

22 THE COURT: Well, actually, my intention was
23 that if the witness exercised due diligence in appealing my
24 order that he should not be committed during the interim. From
25 what I hear this afternoon, Mr. Herrmann has proceeded with due

1
2 diligence, so I will grant the order until November 9th. At
3 which time, I suppose, the Court of Appeals will --
4

5 MR. HERRMANN: Well, yes, your Honor. I put it
6 in there to bring it to your attention, but you didn't have
7 time to read it all, so you can make it --
8

9 THE COURT: Yes, I know. Put it in until --
10

11 MR. HERRMANN: You can conform it to how you
12 want it. How you want it. I said until November 9th or until
13 the Court of Appeals decides the emergency motion, which would
14 be the best order. But if you want to change that --
15

16 THE COURT: I will sign it that way. You may
17 have a stay until November 9th or until the United States Court
18 of Appeals for the Second Circuit decides the emergency motion
19 for a stay of committment now pending before it.
20

21 MR. HERRMANN: Thank you. And I have your per-
22 mission to so notify the U. S. Court of Appeals.
23

24 THE COURT: Well, it's going to be official in
25 about 30 seconds. I have signed the order.
26

27 MR. HERRMANN: Thank you.
28

29 -000oo-

30

31

32

33

34

35 664 PROSPECT AVENUE
36 HARTFORD, CONNECTICUT

37 SANDERS, GALE & RUSSELL
38 Certified Stenotype Reporters

39 996
40 141 CHURCH STREET
41 NEW HAVEN, CONNECTICUT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IN RE GRAND JURY PROCEEDINGS: : DOCKET NO. 76-1490
MARION E. MEADOWS :
:

GOVERNMENT'S RESPONSE TO MOTION
FOR STAY OF COMMITMENT AND TO CONTINUE
NON-SURETY BOND PENDING APPEAL

F A C T S

This is a response to a motion for a stay of commitment and bond pending appeal from an order of the District Court (Zampano, J.) find Marion Meadows in contempt for refusal to provide fingerprints and handwriting exemplars as ordered by a grand jury.

On August 3, 1976, the Union Trust Company on High Ridge Road in Stamford, Connecticut was robbed by a lone, black male who presented a handwritten demand note and withdrawal slip to a teller. The robber fled with \$1,750.00 and the note, leaving the withdrawal slip in the bank. Witnesses observed the license plate of the getaway car which was traced to a home in Greenwich. Inquiry there established that the owner was travelling out of state and had loaned his car to

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Meadows. Police and FBI agents arrived at Meadows' home within two hours of the robbery and found the car in the driveway. They used a loudspeaker to order the occupants out of the house but received no response. The officers thereupon entered the home which they found unoccupied. During a subsequent search of the grounds they found the demand note in a small outdoor fireplace located about five feet from the house. Later that evening Meadows, accompanied by his attorney, surrendered himself to authorities.

Meadows was subpoenaed to appear before a grand jury in New Haven, Connecticut on August 31, 1976, for the purpose of obtaining major case fingerprints and handwriting exemplars from him to compare with the withdrawal slip left at the bank and the demand note at Meadows' home. Between the date of service of the subpoena and August 31, the grand jury was rescheduled for September 6 and Meadows was so notified by mail. He apparently did not receive this notification and did appear on August 31, at which time the clerk advised him to await further notification. He did not appear on September 6.

Meadows was then subpoenaed to the next available grand jury, sitting in Hartford on September 17. At that appearance he was ordered by the grand jury foreman to provide fingerprints and handwriting samples, which order he refused.

He was then taken before Chief Judge Clarie and upon application of the Government an order compelling production of the exemplars was entered.

There is some dispute, the resolution of which is immaterial to the issues herein, over what occurred immediately thereafter. The Government contends that Meadows expressed a continuing intention not to comply with the order if taken back before the grand jury. Meadows does not agree this is so, although his subsequent actions support that view. In any event, the Government, acting upon its perception of Meadows' intent, did not bring him back before the grand jury but rather in the presence of his counsel served him with another subpoena for September 27 in New Haven, inasmuch as the term of the Hartford grand jury expired the next day and its contempt powers were negligible.

Meadows failed to appear on September 27, a capias was obtained on October 1, and he was arrested on October 4. He was brought to New Haven, served with another subpoena for October 5, and then taken before Magistrate Latimer who released him on a two thousand dollars (\$2,000.00) non-surety bond.

On October 5 Meadows appeared with counsel and made an oral motion to quash the subpoena, essentially on the ground that no showing had been made that the exemplars sought were relevant to a legitimate grand jury inquiry. (tr. 10/5 p. 1-8).

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The Government, while not conceding that such a showing is required in all cases, did submit an affidavit attesting to the relevancy of the evidence and the use to which the exemplars would be put (copy annexed hereto as Ex. 1; tr. 10/5 p. 17-21). Meadows thereafter expanded the grounds of his objection to the subpoena, contending that the handwritten note found at his home was illegally seized and that he was entitled to a hearing on that issue before he could be compelled to produce exemplars for comparison with the seized item (tr. 10/5 p. 21-22).

Judge Zampano noted two issues and ruled accordingly. First, the motion to quash on the basis of the reasonableness and relevancy of the witness' appearance before the grand jury was denied, in view of the Government's representations in Court and affidavit (tr. 10/5 p. 27). Secondly, with respect to the search and seizure claim, the Court noted that there was no search involved with the withdrawal slip left at the bank and that therefore there was no basis for Meadows' refusal to provide exemplars for comparison with that document (tr. 10/5 p. 36). With respect to whether a hearing on the legality of the seizure of the note was needed as a predicate to compelling production of exemplars for comparison with it, the Court set October 12 for argument of that issue, in the meanwhile refusing to quash the subpoena and in effect ruling

that exemplars must be produced at least for comparison with the withdrawal slip.

Meadows was thereafter taken before the grand jury, ordered by the foreman to produce the exemplars, and refused (tr. 10/5 p. 39-41). An additional affidavit (Ex. 2), an application for an order compelling production of the exemplars (Ex. 3) and a proposed order (Ex. 4) were submitted to the Court, which order the Court signed (tr. 10/5 p. 45). Meadows was returned to the grand jury, ordered again to give the exemplars, and again refused (tr. 10/5 p. 47). Judge Zampano thereupon found him in contempt (tr. 10/5 p. 53), but granted a stay of commitment until the hearing on October 12 (tr. 10/5 p. 54).

On October 8 Meadows filed a notice of appeal of Judge Zampano's order of October 5. On October 12 further hearings were held on whether the exemplars, not yet provided but ordered on October 5, could be compared with the note seized at Meadows' home. After argument, Judge Zampano reserved ruling (tr. 10/12 p. 13) and granted a further stay of the order of commitment to November 1 (tr. 10/12 p. 14).

The motion for bond pending appeal was filed October 27 and argument has been set for November 9. As of this writing, the District Court has not ruled on the question of whether the exemplars, when or if received, can be compared to the note.

A R G U M E N T

The language of 28 U.S.C. § 1826(b) is crystal clear that no person confined pursuant to § 1826(a) shall be admitted to bail pending appeal if it appears that the appeal is frivolous. See also, In re Millow, 529 F.2d 770, 774 (2d Cir. 1976). The consideration on this motion, therefore, is whether Meadows' appeal from the District Court's order of October 5 is or is not frivolous. While it should be noted that as of this writing the Court's ruling applies only to compelled production of handwriting and fingerprints for comparison with the deposit slip left at the bank, it is submitted that the appeal would be equally frivolous even if the order of October 5 encompassed both the deposit slip and the note.

The first document, left at the bank by the robber, presents no issue of search and seizure whatsoever. Meadows' Fourth Amendment claim pertaining to it is therefore specious. The compelled production of the exemplars for comparison with this document is clearly not affected in any way by how other items may have been obtained. Consequently there is no just cause for the refusal, on the Fourth Amendment grounds raised, to comply with the grand jury's order.

With respect to comparison of the exemplars with the note seized at the home, it has conclusively been established

that search and seizure claims cannot be interposed as a defense to a finding of contempt for refusal to cooperate with an inquiring grand jury, and that no hearing into the legality of the seizure of evidence before a grand jury is required as a predicate to a finding of contempt. United States v. Calandra, 414 U.S. 338 (1975). See also, Smith v. United States, et al, 423 U.S. 1303, 1306 (1976); In re Millow, 529 F.2d 770 (2d Cir. 1976); United States v. Turk, 526 F.2d 654, 666 (5th Cir. 1976), U.S. App. Pending; In re Weir, 495 F.2d 879 (9th Cir.), cert. denied, 419 U.S. 1038 (1974). Meadows' Fourth Amendment claims are therefore in part irrelevant and taken as a whole, devoid of merit.

The original grounds of objection to the subpoena itself, that of a lack of showing of reasonableness and relevance, are equally insubstantial. First, no such showing is required in this Circuit. United States v. Doe, 457 F.2d 895, 899-900 (2d Cir. 1972), cert. denied, 410 U.S. 941 (1973). See also, United States v. Dionisio, 410 U.S. 1, 15 (1972) and United States v. Mara, 410 U.S. 19, 22 (1972). Second, although no such showing is required, it was nevertheless made in this case by the Government's affidavit, thereby countering Meadows' objections which were based on the Third Circuit's exercise of its supervisory powers in In re Grand Jury Proceedings, 486 F.2d 85 (3rd Cir. 1973). Even that opinion

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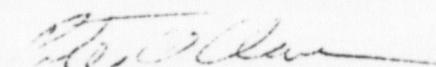
was clarified in In re Grand Jury Proceedings, 507 F.2d 963 (3rd Cir. 1975), cert. denied, 421 U.S. 1015 (1975), to make clear that only a minimal showing was needed. The Government has therefore gone far beyond what is required.

C O N C L U S I O N

For the foregoing reasons it is respectfully submitted that Meadows' appeal is frivolous, that bond pending appeal would be in direct contravention of the mandate of the contempt statute and the case law of this Circuit, and that failure promptly to enforce the District Court's order of October 5 would seriously erode the powers of the grand jury and the District Court.

Respectfully submitted,

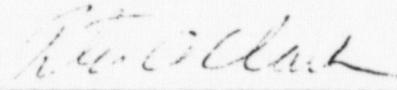
PETER C. DORSEY
United States Attorney
District of Connecticut

By 

PETER A. CLARK
Assistant United States Attorney

CERTIFICATION

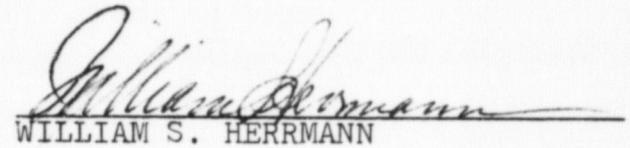
This is to certify that a copy of the foregoing Response was mailed postage pre-paid to William S. Herrmann, Esquire, 16 Oak Street, Stamford, Connecticut this 3rd day of November, 1976.


PETER A. CLARK
Assistant United States Attorney

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CERTIFICATION

This is to certify that a copy of the foregoing appendix
was mailed postage prepaid to Peter C. Dorsey, Esq., U. S.
Attorney, 270 Orange Street, P. O. Box 1824, New Haven, Ct.
06508 this 4th day of December, 1976.


WILLIAM S. HERRMANN